SUPREME COURT OF THE UNITED STATES.

No. 257.

ISAAC GRAHAM ET AL., APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FOR THE PLACE CALLED "ZAYANTA."

INDEX.

	Original.	Print.
Title page	1	1
Index to proceedings before board of land commissioners	3	1
Petition	6	2
Deposition of John Parrott	8	3
Deposition of J. W. Weeks	10	3
Exhibit No. 3, A. F., attached to dep. of J. W. Weeks	10	4
Exhibit No. 4, A. F., annexed to dep. of J. W. Weeks	10	4
Deposition of Jose Bolcoff	17	5
Deposition of J. L. Majors	21	7
Map	26	8
Deposition of T. W. Wright	27	8
Deposition of C. Perez	33	11
Notice	39	12
Deposition of Jose R. Buelna	40	13
Exhibit A., P. L., annexed to dep. of J. R. Buelna	50	15
Deposition of J. R. Snyder	51	16
A, Grant, Exhibit No. 1, A. F., annexed to dep. of Jas. W. Weeks	59	18
B, Exhibit No. 2, A. F., annexed to dep. of Jas. W. Weeks	62	19
D, Translation	67	21
E, Transfer	76	24
Exhibit No. 1, A. F., annexed to dep. of John Parrott	79	2[illegible]

	Original.	Print.
Opinion of the board	82	26
Decree of confirmation	83	27
Secretary's certificate	85	27
Letter from Attorney General	87	28
Petition for review	88	28
Answer	89	28
Letter from Attorney General	90	29
Stipulation	90	29
Order	91	29
Plat of survey from surveyor general	93	30
Order to return survey	93	30
Exceptions to survey by claimants	95	30
" " "	97	31
Stipulation	103	33
Exceptions to survey by the U. S.	103	34
Deposition of Roman Rodriguez	105	34
Deposition of Thomas W. Wright	108	35
Deposition of J. L. Majors	112	37
Deposition of Otis Ashley	116	38
Deposition of Jose Cornelio Perez	122	40
Exhibit 1, annexed to dep. of Jose Cornelio Perez	126	42
Stipulation submitting case	127	42
Opinion	129	42
Order setting aside survey, and directing a resurvey	143	47
Petition for rehearing, grant, translation, and affidavit of James Wilson	145	48
Map	152	50
Monition	156	52
Order on return of monition	157	52
Deposition of L. L. Logan	159	53
Exhibit "W. H. C" No. 1, annexed to dep of L. L. Logan	165	55
Exhibit "W. H. C." No. 2, annexed to dep of L. L. Logan	168	56
Deposition of R. C. Hopkins	169	57
Exhibit No. 1 to dep. of R. C. Hopkins	173	58
Map	175	59
Deposition of Jose Tolcoff	177	59
Notice to close proofs	184	62
Order closing proofs and setting cause for hearing	185	62
Exhibit U. S. No. 1	186	62
Exhibit U. S. No 2	197	66
Deposition of Joseph L Majors	204	69
Opinion	215	73
Order directing new survey	222	75
Order allowing all parties ten days to file exceptions to the last survey	227	76
Exceptions to survey by United States	228	77
Order allowing U. S. attorney to withdraw exceptions, filed July 28, 1862	231	78
Final decree	232	78
Plat of survey	234	79
Order granting appeal on behalf of claimants	235	79
Citation	237	79

1 *Transcript of the proceedings in case No. 260.*

ISAAC GRAHAM *et al.*, claimants,
vs.
THE UNITED STATES, defendant.
} For the place named "Zayanta."

3 *Index to proceedings before board of land commissioners.*

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this fourth day of June, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Isaac Graham *et al.*, for the place named "Zayanta," was presented, and order to be filed and docketed with No. 260, and is as follows, to wit:

(*Vide* page 5 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *December* 2, 1853.

In case No. 260, Isaac Graham *et al.*, for the place named "Zayanta," the deposition of John Parrott, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, with document marked No. 1, A. F., annexed thereto, was filed.

4 (*Vide* page 6 of this transcript.)

In the same case James W. Weeks, a witness in behalf of the claimants, taken before Commissioner Alpheus Felch, with documents marked Nos. 1, 2, 3, 4, A. F., annexed thereto, was filed.

(*Vide* page 8 of this transcript.)

SAN FRANCISCO, *Jan'y* 9, 1854.

In the same case the deposition of Jose Bolcoff, a witness in behalf of the claimants, taken before Commissioner R. Aug. Thompson, was filed.

(*Vide* page 14 of this transcript.)

SAN FRANCISCO, *Nov.* 3*rd*, 1854.

In the same case the deposition of Joseph L. Majors, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(*Vide* page 18 of this transcript.)

SAN FRANCISCO, *Nov.* 28, 1854.

Case No. 260 was ordered to be placed at the foot of the 3d-class cases on the trial docket.

SAN FRANCISCO, *Dec.* 7, 1854.

In the same case the deposition of Thomas W. Wright, a witness in behalf of the claimants, taken before Commissioner Peter Lott, with a map marked "Exhibit B," P. L., annexed thereto, was filed.

(*Vide* page 23 of this transcript.)

SAN FRANCISCO, *Feb.* 26, 1855.

In the same case the deposition of Jose Ramon Buelna, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(*Vide* page 34 of this transcript.)

SAN FRANCISCO, *Dec.* 12, 1854.

In the same case the deposition of Cornelio Perez, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(*Vide* page 28 of this transcript.)

SAN FRANCISCO, *Feb'y* 27, 1855.

In the same case the deposition of Jacob R. Snyder, a witness in behalf of the United States, taken before Commissioner Alpheus Felch, was filed.

(*Vide* page 42 of this transcript.)

SAN FRANCISCO, *May* 13, 1855.

Case No. 260 was submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *June* 26, 1855.

In the same case Commissioner R. Aug. Thompson delivered the opinion of the board confirming the claim.

6 (*Vide* page 71 of this transcript.)

And the following order was made, to wit:

(*Vide* page 74 of this transcript.)

Petition.

To the honorable the board of commissioners appointed to settle private land claims in the State of California, under the act of the 3d of March, 1851:

Your petitioners, Isaac Graham and William Ware, citizens of the State of California, and represented before your hon. board by John Parrott, of San Francisco, as their attorney, respectfully represents that on the 22d day of April, 1841, Joseph L. Majors, a naturalized citizen of Mexico, solicited and obtained from the then governor, J. B. Alvarado, a grant of certain tract of land called and known by the name of Zayanta, near the mission of Santa Cruz, now county of the same name, and more particularly described in the original title, judicial possession, and surveys herewith, accompanied with translations.

7 That from the date of said grant of which judicial possession was given, your petitioners have been in undisturbed possession of the rancho, have improved the same by erecting extensive saw-mills, dwelling-houses, and all other improvements necessary.

That the said Joseph L. Majors has held the said rancho of "Zayanta" in trust for your petitioners up to the 22d day of May last, when he transferred to your petitioners all his right, title, and interest in and to the said rancho. A certified copy of the deed is herewith filed.

Your petitioners therefore pray your hon. board to confirm their title to

the extent therein called for, and cause a patent to be issued in their name as the true and lawful owners of said tract of land called Tayanta.

And your petitioners will ever pray.

ISAAC GRAHAM,
WILLIAM WARE.
By their Att'y, John Parrott.

Filed in office Jan. 4, 1852.
(Signed) GEO. FISHER, *Sec'y.*

8 *Dep. of John Parrott.*

OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &c.,
San Francisco, Dec. 2, 1863.

This day, before Com'r Alpheus Felch, came John Parrott, a witness in behalf of the claimants, Isaac Graham *et al.*, petition No. 260, and being duly sworn, deposed as follows :

Questions by General James Wilson, attorney for claimants.

1st question. What is your name, age, and place of residence ?

Answer. My name is John Parrott, my age is forty-two years, and I reside in San Francisco, in California.

2d question. Look on the document now presented to you, purporting to be a deed from Joseph L. Majors to Isaac Graham and William Ware, hereto annexed and marked Exhibit No. 1, with the initials A. F., and state whether you are a subscribing witness to said deed, and whether you said said Majors execute and deliver the same.

9 Answer. I am a subscribing witness thereto, and said said Majors execute and deliver the same. My name thereon as a subscribing witness was written by me at the time said deed was executed.

3d question. Are you acquainted with said Majors ? If yea, do you know him to be the same man to whom the grant of land was made by Governor Alvarado, on the 22d April, 1841, in the name of Juan Jose Crisostomo Major ?

Answer. I am acquainted with him. He is the same man to whom the grant was originally made.

4th question. Have you at any time been on the rancho where Captain Isaac Graham now lives ? If yea, at what time and how often ?

Answer. I was on it in August, 1845. Graham was in possession of the rancho at that time, and had a saw-mill, and some houses, and some fine horses on it, and also other stock.

Questions by Mr. Graham, associate law agent.

10 Question. At the time when you visited this rancho was Graham or Majors reputed to be the owner ?

Answer. Graham was.

JOHN PARROTT.

Subscribed and sworn to before me the second day of December, 1853.
ALPHEUS FELCH, *Comm'r.*

Filed in office Dec. 2, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Dep. of J. W. Weeks.

OFFICE OF THE BOARD OF U. S. LAND COM'S, &c.,
San Francisco, Dec. 2, 1853.

This day, before Com'r Alpheus Felch, came James W. Weeks, a witness

in behalf of the claimants, Isaac Graham *et al.*, petition No. 260, and being duly sworn, deposed as follows:

(Here follow two maps, page 10.)

Questions by General James Wilson, attorney for claimants.

1st question. What are your name, age, and place of residence?

11 Answer. My name is James W. Weeks; my age is forty years, and I reside at San Jose, California; I have lived since 1831 in California.

2 question. Are you acquainted with the handwriting of Juan B. Alvarado and Man'l Jimeno? If yea, please look on the document now presented to you, purporting to be a grant by said Alvarado to Don Juan Jose Chrisostomo Major, dated April 22d, 1841, and marked "Exhibit No. 1," with the initials A. T., and hereunto annexed as a part of this deposition, and say whether the signatures of said Alvarado and Jimeno appearing thereon are their true and genuine signatures.

Answer. I have looked on said document; the several signatures appearing on said document as those of said Alvarado and Jimeno are their true and genuine signatures; I am acquainted with the handwriting of both of them.

3 question. Are you acquainted with the handwriting of Juan

12 Jose Chrisostomo Majors, and of Jose Bolcoff? If yea, look on the document now presented to you, purporting to be original record of juridical possession given by said Bolcoff, as justice of the peace, to said Majors of the rancho called Zayanta, near the villa of Branciforte, marked "Exhibit No. 2," with the initials "A. F.," hereunto annexed as a part of this deposition, and state whether the signatures of said Majors and Bolcoff appearing thereon are their true and genuine signatures respectively.

Answer. I know the handwriting of said Bolcoff and said Majors; I have looked on said document, and the said signatures appearing thereon as theirs are their true and genuine signatures respectively.

4 question. Are you acquainted with said Rancho Zayanta, and the circumstances connected with the application of Majors for the grant of the same? If yea, state what you know in relation thereto.

Answer I am acquainted with the rancho; I drew a map, or diseno, for said Majors to present to the government when he applied for the

13 grant; at that time myself and others were at work on the land, building mills, making houses, sawing lumber, &c. Majors was interested with us in this work.

5th question. Look on the paper now shown to you, marked "Exhibit No. 3," with the initials "A. F," hereunto attached as a part of this deposition, and purporting to be a map or diseno of said rancho, and state whether it is the map or diseno drawn by you, mentioned in your former answer.

Answer. It is the very same one. At the southeast corner of the rancho is the place called the Rincon, where we used to saw lumber; at the northeast corner is the place where we had a small grist-mill; a line run from the Rincon to the place where the grist-mill was would run on the east side of the river San Lorenzo, and would be on the eastern part of the rancho; on the western side of the rancho are the mountains and three potreros, all of which are on the west side of said river.

6th question. Look on the paper now presented to you, purporting

14 to be a sketch of the map above mentioned in ink, marked "Exhibit No. 4," with the initials "A. F.," and annexed hereto, and state whether a drawing in ink was made by you to represent said rancho.

Answer. It is; the place where the mill was situated is marked thereon

'Molina," and the "potrero" are also marked thereon on the west side of the river above mentioned.

7th question. Was you present when Bolcoff delivered the juridical possession of the land to said Majors?

Answer. I was. Said Bolcoff came on to the ground with his assisting witnesses to measure off the land, as was customary in those days; they commenced at the Rincon, and followed along the foot of the hills across the creek called Zayanta, and then measured along the creek to the grist-mill before mentioned; from thence they returned back and went to the first potrero, on the west side of the San Lorenzo Arroyo, and there they marked some small oak trees; and from that point they began measuring again, and run in a northeastwardly direction, crossing the San Lorenzo near
15 the junction of the Zayanta Creek with it to the penal above the road on the sand-hills; at this point they marked a pine tree. At this place said Bolcoff called on Majors to know if he was satisfied, and said he was, and then he proclaimed it to be said Majors's property, and gave him juridical possession in the usual manner.

8th question. Please name the persons interested in the mills and improvements made by you and others on the land.

Answer. Joseph Majors, who is the same person named Juan Jose C. Majors in the grant, Peter Lasson, Frederick Eagle, William Ware, and myself. We continued in the possession and enjoyment of the land after the grant to Majors; he began to erect a saw-mill, and built houses, and were making improvements when Captain Graham came; he purchased the property of us, and took possession of it and went on making improvements, and has continued there from that day to the present, and has lived on the place during that time; he has now three mills on the place, several
16 houses, considerable stock, and some fields enclosed and under cultivation; there were some fields enclosed and under cultivation on the place before he sold to Graham.

Questions by Mr. Graham, associate law agent.

1 question. When did Majors obtain the grant for the land?

Answer. On the 22d day of April, 1841.

2 question. When was the land sold to Graham?

Answer. In 1842, after judicial possession was given.

3 question. Was said Graham at that time a Mexican citizen, or at any time afterwards?

Answer. I don't know.

JAMES W. WEEKS.

Subscribed and sworn to before me this 2d day of December, 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office Dec. 2, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Dep. of Jose Bolcoff.

17 OFFICE OF THE BOARD OF U. S. LAND COMMISSIONERS, &C.,
San Francisco, Jan. 9, 1854.

On this day, before Commissioner R. Aug. Thompson, came Jose Bolcoff, a witness in behalf of claimants, Isaac Graham *et al.*, No. 260, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary.

Present: Gen'l James Wilson, att'y for claimant, and R. Greenhow, esq., associate law agent.

In answer to questions, witness states his name is Jose Bolcoff, his age 56 years, and residence Santa Cruz, California.

Question by claimants' attorney. Are you acquainted with the rancho called Tayanta, in the county of Santa Cruz, near the village of Branciforte? If so, state how long you have known it.

Answer. I know said rancho, and have known it ever since the year 1834.

Question by same. Have you ever at any time given juridical possession of said rancho in your official capacity as justice of the peace? And if yea, when and to whom did you give such possession?

18 Answer. I did, as justice of the peace, give such juridical possession of said ranch to Jose Majors some time about the year 1840 or 1841.

Question by same. Look at the paper now shown you, marked "Exhibit No. 2," with the initials "A. F.," annexed to the deposition of James W. Weeks, filed in this case, and state, if you know, what is the character of the paper and what you know of its execution.

Answer. I have examined said paper, and find it to be the original record of the juridical possession given by me to Jose Majors, and referred to by me in my preceding answer. The said paper is genuine, and was drawn up and executed by me at the time and date which appear on it.

Question by same. Look at the maps now shown you, marked as Exhibits Nos. 3 and 4, annexed to the deposition of James W. Weeks, filed in this case, and describe, with reference to said maps, the boundaries of the land of which you gave said juridical possession to Jose Majors.

19 Answer. Said possession was given by the map in pencil, marked "Exhibit No. 3." I have given juridical possession of said ranch three different times by said map. "Exhibit No. 4" is a correct delineation of the said rancho, equally so with the other, and is on a somewhat larger scale. When I gave said possession I marked a large pine tree by a deep chop, as the commencement of the line between said rancho and the rancho of San Augustin. Said pine tree is situated near the centre of the largest cluster or grove of trees represented on said map, and the aforesaid boundary line runs from thence northwest to the mill, represented on said maps by a cross and circle, near which, and north of it, an oak was marked as a corner; thence I run the line southwest, including the Corral Viejo, and crossing the arroyo de San Lorenzo to a point on the sierra where a large redwood tree was marked as a corner; thence southeast, a straight line to another large redwood tree, which was marked as a corner; thence a

20 straight line north-northeast to the beginning. Jose Majors was personally present, and took corporal possession of the land. There were at that time several houses on land and two mills, which were partly owned by Major and part by Graham. The lands were also cultivated by Majors and Mr. Graham. All the lands were cultivated that were proper for that purpose. They had also on the ranch horses, cattle, and hogs. The present claimant, Isaac Graham, has continued in the possession and occupation of said ranch from that time to the present. He has since built several additional houses and mills, among which is a flouring-mill and a saw-mill.

Question by U. S. ass't law agent. To whom did you give the juridical possession, on the two other occasions of which you spoke, of the land in question? State the circumstances in relation to them.

Answer. I first gave such possession to Joaquin Buelna, and the second to Francisco. Mrs. Buelna sold his interest to Mrs.,* and the latter subse-

* Exact copy.

quently surrendered his interest in favor of Major, and I gave the possession to the three in succession.

JOSE BOLCOFF.

21 Sworn to and subscribed before me Jan'y 9, 1854.

R. AUG. THOMPSON, *Com.*

Filed in office Jan. 9, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Dep. of J. L. Majors.

UNITED STATES OF AMERICA,
State of California:

SAN FRANCISCO, *Nov.* 1, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Joseph L. Majors, a witness in behalf of the United States in case No. 260 on the docket of said board, wherein Isaac Graham *et al.* are claimants; and said witness being sworn, deposed as follows.

The claimants' counsel, D. S. Gregory, is present.

Questions by U. S. law agent.

1 question. What is your name, age, and residence?

22 Answer. My name is Joseph L. Majors; my age, 49 years; my residence, Santa Cruz County, California.

2d question. Are you acquainted with the land claimed in this case, the Rancho of Sayanta? If yea, whether you are the original grantee thereof?

Answer. I am acquainted with said rancho, and it was granted to me for Isaac Graham and others; that is, it was granted in my name, because I was a Mexican citizen and could hold the land; but I held it for Graham and others, who, not being citizens, could not hold it in their own name. The other persons were William Ware, Peter Lasson, and Frederick Heagle. These were the persons I first held the land for, and then Graham bought out Lasson and Heagle, and I held it for Graham and his partner, Henry Neil, and said Ware. They were putting up a saw-mill on the place where Graham and Neil come in.

3 question. Did you ever live on said land or cultivate any part of it?

Answer. I never made my home on it. I built a house on it, and

23 was interested in and assisted to build a saw mill upon it. I never cultivated any of the lands myself, but Graham, Neil, and Ware did live on the land, and cultivated it every year from the time it was granted.

4th question. Did you ever receive juridical possession of the place from any one? If yea, from whom?

(4th question objected to by claimants' counsel as incompetent in attempting to prove matter of record by parol.)

Answer. I received juridical possession of the place from Jose Bolcoff, first alcalde of Santa Cruz.

5th question. State whether the juridical measurement was commenced and how it run, and describe the lines.

Answer. We commenced the measurement at a little oak tree on the southwesterly part of the ranch, and we run 5,000 varas up to a little stream where stood a small grist-mill which I had built. There we made a cross on an older tree by cutting with an axe. I think the little oak tree

24 where we started was marked, though I am not positive. I know it

was ordered to be marked. That tree has been cut down; the stump of it is standing there. Then we went down near the southwest part of the ranch and measured from a pine tree on the west line across in an easterly course 3,700 varas, as near as I can recollect, to a pine tree on the eastern line. I marked this last-mentioned tree myself by cutting a cross on it. It stood on the line of the San Augustin ranch. That was all the measuring we did. It was done on horseback with a hair rope 100 varas in length.

6th question. Who also were present at the juridical measurement besides you and Jose Bolcoff?

Answer. Francisco Rodriguez, Ramon Rodriguez, Cornelio Perez, and James Weeks was there, and several others whose names I do not now recollect. The account was kept by Francisco Rodriguez, and the line was carried by Ramon Rodriguez and Perez.

7th question. Was there ever any other juridical possession given of said ranch by said Bolcoff to you?

25 Answer. There never was any other given to me.

8th question. Look at the deposition of Jose Bolcoff, taken in this case January 9, 1854, and at his description of the land as given by him in said deposition, and state whether you ever received juridical possession according to that description; and state also how much land would be embraced within that description.

Answer. I received the juridical possession according to the map in lead pencil marked "Exhibit No. 3" to said Bolcoff's deposition; I did not receive it by any such measurement as Bolcoff describes in his said deposition; there was no such thing done that day, and it was done as I have before described, after the measurement was made in which I received possession. Bolcoff waved his hand around, saying, "I give you possession of all the land embraced within the hills all round." That would embrace some 8 or 10 leagues of land; this lead-pencil map would embrace that much land; it was considered so at the time.

Cross-examined by claimants' counsel.

26 1st question. Had the rancho of Zayanta been granted to other persons previously to the time it was granted to you? If yea, to whom? And had juridical possession thereof been given by Bolcoff to those persons to whom the same had been granted?

Answer. The rancho had been granted first to Joaquin Buelna, and Bolcoff told me he had given Buelna juridical possession, and then it was granted to Francisco Moss, and Bolcoff gave Moss juridical possession. I passed by and saw him when he was doing it, and then it was granted to me.

J. L. MAJORS.

Subscribed and sworn to before me on this 1st day of November, A. D. 1854.

PETER LOTT, *Comm'r, &c.*

Filed in office Nov. 3, 1854.
(Signed) GEO. FISHER, *Sec'y.*

(Here follows diseno, page 26.)

27 *Dep. of T. W. Wright.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Dec.* 6, 1854.

This day came before Peter Lott, commissioner for taking testimony to

be used before the board of U. S. land commissioners in said State, Thomas W. Wright, a witness on behalf of the claimants, Isaac Graham *et al.*, in case No. 260 on the docket of said board; and said witness being sworn, deposed as follows.

The U. S. law agent is present.

Questions by claimants' counsel.

1st question. What is your name, age, and residence?

Answer. My name is Thomas W. Wright; my age, 20 years; my residence, in Santa Cruz, California.

2 question. Are you the county surveyor of Santa Cruz County? If yea, are you acquainted with the rancho called Sayanta?

Answer. I am the county surveyor of said county, and am acquainted with the rancho named?

28 3d question. Look at the document marked "A, P. L.," exhibit to this deposition, and heretofore filed in this case, and state whether you recognize the map contained therein as a correct representation of said rancho.

Answer. I cannot say that it is a correct description of the land, such as I would be so called by a surveyor; it is disproportionated; I suppose it has been made from a view of the eye; I can find here several of the landmarks which I am acquainted with on the ground, and which I could easily find with this map as a guide.

4th question. State whether or not you have surveyed any of the lines of said rancho; and if yea, how did you ascertain any of the corners or landmarks?

Answer. I have surveyed some of the lines of said rancho; I found some of the landmarks by what I suppose was a duplicate of this map, and some of them were also pointed out to me by Jose Bolcoff.

5th question. State what lines you run.

29 Answer. At the request of the claimant in this case, I went and measured the land on last Thursday, Dec. 1, 1854. I commenced at an oak tree marked with a cross, pointed out to me by said Balcoff and marked on the lead-pencil map herewith filed, and made a part of this deposition, marked "B, P. L." Said starting point is indicated on said last-mentioned map by the words "oak tree, point of beginning." I run thence 68 chains north 56° east, to the point marked pinal, which was shown to me by said Bolcoff. He showed me a stump there, and said the tree had been cut down, or the map in some way destroyed. Thence I run north 6° 36′ west, 175 chains, to an oak tree which had the appearance of having been marked and had a stone lying at the root of it, which Bolcoff told me was placed there by his order when he gave possession of the place. It is indicated as a corner on said map, thus *, and is near the point * Molina. These are the only two lines I measured. I ascertained the point marked "Corral Viejo" by reference to some sectional lines which I had before that time run. Its distance from the last-mentioned oak tree near the mill

30 (Molina) is 140 chains.

6th question. State how far it is on the last-mentioned line from said oak near the mill westerly to the crest of the hills west of the San Lorenzo.

Answer. I cannot give the distance precisely. I ascertained by triangulation at several points the distance of the said hills at their summits from the said San Lorenzo Creek to be from a mile and a half to 1¾ wide at

© See manuscript.

different places. The distance on this line from said tree near the mill Molina to said crest of the hills I should say is about three miles, a little more or less.

7th question. State the distance from your beginning point in a southwesterly course across the San Lorenzo to the summit of said hills on the west side of said creek.

Answer. This distance is about 1½ mile.

8th question. What do you suppose to be the area between the lines pointed out to you by Bolcoff as those by which he said he gave juridical possession and the crest of the hills west of the San Lorenzo?

31 Answer. There is about one league, perhaps a little more or less.

9th question. Does the map filed by you herewith, "B, P. L.," correctly indicate the position of the improvements and other objects on the land in question?

Answer. It does, as nearly as I could represent them by a hurried survey. I was only occupied 8 hours in the work. I did and do not say that it is all as accurate as it might be with more care and time in drafting; but in the main it is correct.

(The U. S. law agent objects to the reading of the foregoing deposition in evidence in this case because the survey was made under information of irresponsible persons not under oath.)

Cross-examined by U. S. law agent.

1st question. Do you know where once stood the grist-mill on what is now called the Zayante Creek?

Answer. The place where the old mill stood was pointed out to me by Bolcoff; it is the place indicated on my map "B, P. L.," thus* "Molino."

32 2d question. Measuring in an easterly course from that point to the San Augustin Ranch, what is the distance?

Answer. Measuring easterly from the "Molino" I would not touch the San Augustin Ranch. There is a place on the south part of my map marked "Graham" mill, which I suppose you mean; measuring east from that mill I would strike said San Augustin Ranch, but I do not know the boundary of said ranch, and cannot tell what is the nearest point to said mill, but from said mill to the old dwellings on San Augustin Ranch is about one mile.

3rd question. Describe the topography of the valley in which this ranch in question lies.

Answer. The ranch lies in a valley between two ranges of mountains on the east and west sides; the two streams of San Lorenzo and Zayanta run in southerly directions through said ranch, and between them a spur of the mountains comes down from the north and terminates in small sand-hills covered with pine brush. The land bordering said streams is some

33 prairie and some timber, mostly level; in places gently rolling.

THOS. W. WRIGHT.

Subscribed and sworn to before me on this 6th day of December, A. D. 1854.

PETER LOTT, *Commissioner, &c.*

Filed in office December 7, 1854.

(Signed) GEO. FISHER, *Sec'y.*

* See manuscript.

Dep. of C. Perez.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Dec'r* 8, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Cornelio Perez, a witness on behalf of the United States in case No. 260 on the docket of said board, wherein Isaac Graham *et al.* are claimants; and said witness being sworn, deposed in Spanish, which is interpreted by the interpreter to said board as follows.

The U. S. law agent is present. General Wilson, for claimant, is also present.

Questions by U. S. law agent.

34 1st question. What is your name, age, and residence?

Ans. My name is Cornelio Perez; my age, 44 years; my residence, in Santa Cruz County, California.

2d question. Are you acquainted with the claimant in this case, Isaac Graham, with Joseph L. Majors, Jose Bolcoff, and with the ranch called Zayante, claimed in this case? If yea, state how long you have known them.

Answer. I am acquainted with all the persons named and with said rancho. I have known said Graham 15 or 16 years, said Majors 15 or 20 years, and said Bolcoff a much longer time, and I have known the said rancho some 18 or 20 years. I knew while it belonged to the original grantee, Joaquin Buelna.

3rd question. Was you present when the juridical possession of said rancho was given to Joseph L. Majors? If yea, state all that was done on that occasion.

Answer. I was present on that occasion. The land was measured,
35 and I was one of the cord-bearers. We measured first from a point called "Rincon del Monte," where there was a tree marked with a cross, an oak tree on the left-hand side of the main road where it enters the woods. From that point we went measuring along the said road, crossing the creek between the house of Mr. Graham, and then all along up the creek to where it issues from the woods. There we marked a tree called Alamillo. Then we went without measuring over to a place called the Potrero, crossing the San Lorenzo River. There was a grove in which we marked a pine tree; then we measured from there across the San Lorenzo where a road crosses it, and continued the measurement down to the ranch of San Augustin, where we marked another pine tree; then from there we went to measure the ranch of San Augustin. That was all we did in the Zayante ranch.

4th question. Did Bolcoff wave his hand and say to Majors, "I give you possession of all this land to the hills?"

Answer. When we got to the boundary of San Augustin Ranch
36 Bolcoff told Majors to take possession of the land which had been measured, by the ceremonies usual on such occasions, pulling up grass and the like. I do not remember of his waving his hand or speaking of the hills.

5th question. Were you present at a measurement recently made by Thomas W. Wright, the county surveyor?

Answer. I was not.

6th question. Do you know the place called Pinal on said rancho?

Answer. Pinal means a grove of pine trees, and there are pine groves in many places around said ranch. I know of no particular point designated by that name.

7th question. What quantity of land would be contained within the points from which you measured, taking in the surrounding hills up to their summits?

Answer. I do not know what amount of land was in it.

37 *Cross-examined by Gen'l Wilson, for claimant.*

1st question. How long have you known Capt. Graham to occupy said ranch, and for what purposes has he so occupied it?

(1st question objected to by law agent as new matter.)

Answer. I do not remember the exact time. It is some 11, 12, or 13 years. He has occupied it for farming purposes, stock-raising, and he has had saw-mills and grist-mills on it. There was a mill partly built on the place when said Graham bought it; he finished that mill. He has built 3 mills on the place; the water carried one away, and he now has a saw-mill and a grist-mill there. I have worked in all the mills a great deal, and hauled logs and done other work. Graham has a number of houses on the place; I do not know exactly how many.

Re-examined by U. S. law agent.

1st question. State when the mills of which you have spoken were built, and whether anybody else has ever occupied said place?

38 Answer. I do not remember the dates of the building of the mills. There were three saw-mills running when the gold mines were first discovered; the grist-mill has been built since. I know nothing more about the occupation of said rancho than this: that said Graham has always lived there since he first went on to the place, and has had people always at work for him there.

CORNELIO PEREZ.

Subscribed and sworn to before me on this eighth day of December, A. D. 1854.

PETER LOTT, *Commissioner.*

Filed in office December 12, 1854.
(Signed) GEO. FISHER, *Sec'y.*

39 *Notice.*

No. 260.

Isaac Graham, claimant, to the att'ys for claimant, Hon. Edward Stanly, Hon. James Wilson:

GENTLEMEN: Take notice that on the 24th day of February, A. D. 1855, at the hour of 10 a. m., or as soon thereafter as the matter can be reached before a proper commissioner, at the court-room of the commission, I shall proceed to take the deposition of Ramon Buelna and others, to be read in evidence on the trial of the above-entitled case on the part of the United States.

Respectfully, J. H. McKUNE, *U. S. Law Agent.*

Rec'd copy February 23rd, 1855.

JAMES WILSON.

40 *Dep. of Jose R. Buelna.*

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Feb'y 24th*, 1855.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Jose Ramon Buelna, a witness on behalf of the United States in case No. 260 on the docket of said board, wherein Isaac Graham *et al.* are claimants and said witness, being sworn, deposed in Spanish, which being interpreted by the interpreter to said board as follows.

General Wilson, counsel for claimant, is notified and does not attend. (See annexed notice.)

Questions by U. S. law agent.

1st question. What is your name, age, and residence?

Answer. My name is Jose Ramon Buelna; my age, 46 years; my residence, in Santa Cruz County, California.

2d question. Are you acquainted with the rancho called Zayanta, formerly occupied by Francisco Moss, and now claimed in this case? If yea,
41 look at the map now shown to you, marked "A, P. L.," as an exhibit to this deposition, and state whether it is a correct representation of said rancho, and explain the same.

Answer. I am acquainted with the rancho named. My father originally petitioned for this rancho for the benefit of his family, and I myself went on and occupied. It was afterwards occupied by Francisco Moss; and this map, "A, P. L.," is not a correct representation of said ranch.

3d question. State what was the western boundary of said rancho.

Answer. The Rio San Lorenzo was the boundary of the rancho as given to my father.

4th question. Standing at the southern boundary of said rancho and facing north, what quantity of land would there be in a circle extending all around to the summits of the mountains?

Answer. I think there would be about 20 square leagues, or, as I would state it, I think it is about 7 leagues along the top of the mountains
42 west of the San Lorenzo, in view from this point, to where they meet the tops of the mountains on the north, and it is about 3 leagues across from the eastern boundary of this ranch to the said tops of the mountains on the west.

5th question. What was the size of the rancho Zayanta given to your father, and did it pass to the west of the river San Lorenzo at any point?

Answer. The rancho given to my father was one league in length and a half a league in width.

JOSÉ RAMON BUELNA.

Subscribed and sworn to before me on this 24th day of February, A. D. 1855.

PETER LOTT, *Commissioner.*

Now comes Edward Stanley, esq, and represents the claimant in this case, and asks leave to cross-examine the said witness herein, which, with the consent of the United States law agent, is accordingly done, and is as follows, to wit:

Questions by Mr. Stanley, attorney for claimant.

43 1st question. What was the name of your father?

Answer. Jose Joaquin Buelna. He died about four or five years ago.

2d question. Was any claim presented to this board of land commissioners by his heirs for said rancho?

Answer. I do not know.

3d question. How long has Isaac Graham lived on said rancho?

Answer. I cannot remember how long; I suppose four or five years, more or less, before the Americans came into the country.

4th question. Did Graham have possession of any of the land west of the San Lorenzo River? Did he have a mill there, or corral his cattle there? Has he not cultivated land on the west side of said river for years past?

Answer. I do not know whether he ever had possession there, but he had a field on the west side of said river, and kept stock there. He also cut timber in the mountains on the west side of said river. He had a mill,
44 but it was on the east side of said river.

5th question. Look at the map now here presented to you, marked B, P. L., annexed to the deposition of Thomas W. Wright, heretofore filed in this case, and state what is the distance from the point of beginning to the point marked pinal.

Answer. I cannot state exactly what the distance between those two points is, but it is probably fifteen hundred varas.

6th question. Was you ever on said rancho with Jose Bolcoff, formerly alcalde?

Answer. The day he gave possession to my father I was with him; I was one of the cord-bearers or measurers.

7th question. At what point on this map did Bolcoff begin the survey?

Answer. I am not very certain, but I think he began at the place marked on this map Corral Viejo, and measured towards the point marked, "oak tree, place of beginning."

8th question. What is the distance from the point marked Molino
45 to the crest of the hills on the west side of the San Lorenzo?

Answer. It is a long ways. I never passed over it in that direction to the tops of the mountains, and cannot very well estimate it, but I suppose it is about four or five leagues.

9th question. What is the distance from the place marked, "oak tree, point of beginning," in a southwesterly course, to the tops of the hills on the west side of the San Lorenzo River?

Answer. I have never travelled over it in that direction. It is probably a league or a league and a half, more or less.

10th question. How many leagues of land is embraced between the lines run by Bolcoff and the crest of the hills on the west side of the San Lorenzo? By the lines run by Bolcoff, I mean the lines drawn on the map, beginning at the oak tree, and running thence to the Penal; thence to the corner near Molino, and thence to Corral Viejo.

Answer. I cannot estimate it, but I suppose it contains eight
46 square leagues of land, and is about ten leagues around it.

11th question. How many years did you first occupy the rancho?

Answer. I do not remember exactly, but I think it was about eight years.

12th question. To whom did your father sell the rancho?

Answer. To a man they called Francisco Lageamess, a Frenchman or Canadian. They sometimes called him Francisco Moss.

13th question. How long after your father left the rancho before Graham went on to it?

Answer. I cannot state. I think Moss had it about three years, and then

I think Miller had it awhile, but I am not sure of this. Jose Bolcoff gave possession of the rancho to my father.

14th question. Did Bolcoff give him possession of any land on the west side of the San Lorenzo River?

47 Answer. He did not. The river was established as the boundary on that side.

15th question. Standing at the southern boundary of said rancho and facing north, what quantity of land would there be included in the lines run by Bolcoff and the summit of the hills on the west side of the San Lorenzo?

Answer. It would be ten leagues, more or less, all around it.

16th question. What quantity of land is included in the lines run by Bolcoff and the San Lorenzo River?

Answer. The possession was given of one league in length and half a league in width. The land is about one league long and half a league wide I cannot state the quantity.

17th question. What is the distance from the point marked Molino on the map last referred to to the summit of the sierra west of the San Lorenzo?

Answer. Probably about five leagues, a little more or less.

18th question. What is the distance from the top of the hills on

48 the west to the top of the hills on the east side of said river, at the south end of said rancho?

Answer. It is probably three leagues.

19th question. Who claims the land on the west side of the San Lorenzo?

Answer. I do not know. Graham has told me since the possession was given to my father that it belonged to him. I do not know who claimed it at the time Bolcoff gave the possession.

20th question. Have you known any one except Graham to claim the land on the west side of the Son Lorenzo?

Answer. I have not. Graham told me that it was his to the top of the mountain.

21st question. What rancho adjoined your father's on the west?

Answer. There was no rancho.

22d question. Was J. L. Majors ever put into possession of said rancho by the authorities?

Answer. I know of no such possession. I never saw it.

49 23d question. Did Majors ever petition for a grant of said rancho or ever claim it?

Answer. I do not know that he ever did.

Questions by law agent.

1st question. When you speak of the crest of the hills on the west side o the San Lorenzo, do you mean the first range of the hills or the highest points of the mountains? Please state the distance between the two.

Answer. I mean the highest points of the mountains. The hills commence near the river, and from the foot of these hills to the top of the mountains is, more or less, two leagues and a half.

JOSE RAMON BUELNA.

Subscribed and sworn to before me on this 24th day of February, A. D. 1855.

PETER LOTT, *Commissioner.*

Filed in office February 26, 1855.

(Signed) GEO. FISHER, *Sec'y.*

(Here follows map, page 50.)

51 *Dep. of J. R. Snyder.*

UNITED STATES LAND COMMISSION,
San Francisco, Feb. 27, 1855.

On this day, before Commissioner Alpheus Felch, came Jacob R. Snyder, a witness on behalf of the United States, in case No. 260, wherein Isaac Graham *et al.* are claimants, who, after being duly sworn, deposed as follows:

Questions by Mr. McCune, law agent.

1st question. Please state your name, age, and place of residence.

Answer. My name is Jacob R. Snyder; my age is forty-two years; and I reside in San Francisco, California.

2d question. Do you know the Rancho Zayanta, in Santa Cruz County, claimed in this case? If yea, state whether you ever surveyed the same, and also at whose request.

Answer. I know the rancho called by that name and claimed by Isaac Graham. I surveyed said rancho, at said Graham's request, in 1847.

3d question. Look on the map now here presented to you, marked A, P. L., exhibit to deposition of Jose Ramon Buelna, Feb. 24, 1855, here-
52 tofore filed in this case, and state what you know of the same.

Answer. It is my belief that this is the map which I drew of said rancho as surveyed by me. It looks like my work, and is the original map made by me, or a copy of it. In making the survey I run the lines according to the directions of said Graham, running from point to point as he pointed out the objects to me.

4th question. Did Mr. Graham at the time you made the survey exhibit any title-papers to you?

Answer. He exhibited either the original title-papers or the testimonial of the giving of the juridical possession, I do not remember which.

5th question. Did your survey conform to the descriptions in said documents?

Answer. I think the quantity that I surveyed exceeded the quantity described in said documents. I think the grant called for a league of land, more or less, and that the juridical possession that had been given to
53 him was of a strip of land on the Zayanta creek, a league in length and half a league in width. I thought it should be surveyed according to the juridical measurement, but he thought an entire square league of land ought to be surveyed to him. I run according to his directions, and it was our intention to survey a league. We took into the survey a league or a little more.

6th question. Are you certain that the grant called for a square league of land?

Answer. I am under the impression that it did. My impression is that he had a paper there that mentioned one square league, and the controversy between us at the time of the survey grew out of the fact of his having a paper of that kind, while the document which he presented showing the juridical measurement was for half a league only.

7th question. According to that record of juridical measurement, on which side of the San Lorenzo Creek did the half a league which was deliv-
54 ered to him lie?

Answer. It was on the north side of the San Lorenzo, and was located on the Zayante, and on both banks of it.

Questions by Gen'l James Wilson, attorney for claimant.

1st question. Do you recollect whether any monuments were pointed out to you in making that survey?

Answer. I do not recollect any, excepting that I think there was an old corral somewhere on the north part of the survey, to which we directed our course.

2d question. Do you recollect a little mill towards the northwest corner of the rancho?

Answer. I recollect there was some improvement on that part of the rancho, but I cannot remember what it was. It seems to me there was some remains of an old building there, but I cannot tell what it was.

3d question. Please describe the courses, distances laid down on the map above described.

55 Answer. The north line of the rancho was north forty-three degrees west, five thousand varas; the west line runs north six and a quarter degrees east, three thousand varas; the south line runs north forty-three degrees west, five thousand seven hundred and thirty-one and a quarter varas. When we run the east line a controversy arose between Graham and two of the adjoining landowners, and I took the courses of two or three lines merely to find out where they would intersect certain points. There was no definite line run. During the time we were examining this part of the boundaries Mr. Majors and Sanciorain, who claimed the adjoining lands, were present a part of the time.

4th question. When did you first know the Zayanta rancho?

Answer. In the winter of 1845.

5th question. Who then was in the occupation of it?

Answer. Mr. Graham. Both Graham and a man by the name Ware of lived on it at that time.

56 6th question. State what improvements were then on it.

Answer. There was a house in which Graham lived, and there was a mill and a corral. There was a corral on the south side of the San Lorenzo and towards the southwest corner of the rancho where their cattle and horses run. The places called the potreros, which were occupied by their cattle and horses, were situated south of the San Lorenzo At the time I made the survey Graham was building a mill on the San Lorenzo, which was then nearly completed. I went into that neighborhood in 1845, and remained there until the spring of 1846. In 1846 I was about in the military service and returned in 1847, and was then engaged in surveying in that neighborhood until the discovery of gold in the early part of 1848. I was appointed surveyor for that district by Governor Mason.

7th question. From the time you first knew the Zayante rancho in 1845 until you left that neighborhood in 1848, as stated above, did you ever

57 know of any person claiming or occupying the land lying south of the San Lorenzo Creek to the south line of the rancho as you surveyed it, including the corral aforesaid and the potreros, except Isaac Graham, the claimant in this case?

Answer. There was a portion of that land which was claimed by Sansiorain, lying at the southeast corner of the survey as represented on the map. In consequence of the dispute between him and Graham we could not establish the line when the survey was made. In consequence of this several lines were run, as represented on said map, when we were surveying at the southwest corner of the land. I think I remember that a man by the name of Bolcoff, who claimed the land on the other side of the ridge, came and said that we were getting too far over, and were encroaching on his land. Nobody except Graham was in possession of the portion of land described in the interrogatory. The line from the southwest corner

58 where Bolcoff made his claim to the southeast corner of the survey runs along the mountain ridge.

Questions by law agent.

1st question. Did you have an order from Governor Mason to make that survey?

Answer. I did not.

J. R. SNYDER.

Subscribed and sworn to before me this twenty-seventh day of February, 1855.

ALPHEUS FELCH, *Commissioner.*

Filed in office Feb'y 27, 1855.

(Signed) GEO. FISHER, *Sec'y.*

59 *A Grant. Exhibit No.* 1, *A. F., annexed to dep. of Jas. W. Weeks.*

Sello 1o. Seis pesos.

Habilitado provisionalm'te por la aduana maritima de Monterey para los anos de 1839 y 1840.

ALVARADO.
ANTONIO M'A OSIO.

Valga p'a los anos de 1841 y 1843.

ALVARADO.
ANTONIO M'A OSIO.

[SELLO.] Juan B. Alvarado, gobernador constitucional del departamental de las Californias:

Por cuanto D'n Juan Jose Crisostomo Mayor, naturalizado y casado con Mejicana ha pretendido para su beneficio personal y el de su familia el terreno que antes ocupaba D'n Franc'o Mos, conocido con el nombre de Zayante, colindante con la Villa de Brancaforte y Mision de Santa Cruz practicadas previam'te las diligencias y aberiguaciones concern'tes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas a nombre de la nacion Mejicana he venido en concederle el terreno mencionado declarandole le propiedad de el por las pres'tes letras sin perjuicio del aprovechamiento comun de los habitantes de la Villa de
60 Branciforte en orden a portos, aguas, maderas, lena, &c., y sugeto a pagar el canon que se le imponga si resultare pertenecer a los egidos de d'ha villa y a las condiciones siguientes:

1ra. Podra cercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso y cultivo que mas le acomode; pero dentro de un ano fabricara casa y estara habitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunos arboles frutales a silvestres de alguno utilidad.

3a. El terreno de que se hace mencion es de una legua de latitud, poco mas o menos segun esplica el diseno que corre en el esped'te el juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convin'tes.

4a. Si contraviniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

61 En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el silvo de acientos y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey á veinte y dos de Abril de mil ochocientos cuarenta y una.

JUAN B. ALVARADO.
MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de asientos sobre adjudicacion de terrenos valdios á f'a 4.

JIMENO.

El ex, mo Senor Gobernador dispone se tome razon de este titulo en la prefectura del 1er distrito.

JIMENO, *S'rio.*

San Juan de Castro, Abril 23 de 1841.
Tomese ragen.

JOSE F. CASTRO.

Le tomo razon de este titulo á foja 2 st'a del libro respectivo en esta prefectura del 1er distrito.

MAN'L CASTAÑARES, *S'rio.*

Filed in office June 4th, 1852.

GEO. FISHER, *Sec'y.*

B Exhibit No. 2, A. F. annexed to dep. of Jas. W. Weeks.

62 Sello cuarto. Una cuartilla.

Habilitado provicionalm'te por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los anos de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO.
ANTONIO MARIA OSIO.

S'r juez de paz:

[SELLO.] Juan Jose C. Majors de esta vecindad ante V. dise que abiendose obtenido la consecion propia del terreno conosido con el nombre de la Zunta; ocurro ante V. p'a q'l se sirba darle la posecion juridica conforme esta prevenido en el aut'o 4 del titulo de d'ho terreno que solo espedio de veinte dos de Abril presente ano que debidam'te p'a cuando obre los efectos deceados por tanto A. V. suplico se sirva ponerla en posecion que solicita en lo que recibira justicia.
St'a Cruz, Julio 13 de 1841.

JUAN JOSE CRISOSTOMO MARJ'E.

Presentado y admitido, en virtud de la antecedente solicitud proceder por mi el juez a la medicion senalamiento de linderos y posecion juridica que solicita el interesado p'r este esped'te senalandose para ege-
63 cutarlo el dia 24 del presente mes para lo q'e se sitara con valetas de comparendo a los colindantes asi yo d'ho juez de paz lo decrete mande y firme con los de ass'a con q'e actuo por receptoria a falta de escribano publico segun d'ho doy fee.

JOSE BOLCOFF.
MAN'L ROD'Z.
CORNELIO PEREZ.
RAMON RODRIDGUEZ.

En el rancho de Sayanta de 25 de Julio de 1841, presente ano. En cum-

plimt'o del ante de f'ha concurrieron los C. C. colind'tes deste rancho y sitado p'a la medida y senalamt'o de linderos y posecion nombre p'r medid'os a los C. C. Fran'co Rodrigues y Cornelio Perez a q'r previa la aceptacion y juram'to procedan al desempeno de su encargo. Asi yo el juez lo decrite mande y firme con las de assa.

JOSE BOLCOFF.
CORNELIO PEREZ.
FRAN'CO RODRIGUEZ.
RAMON RODRIGUEZ.

En la f'ha en el rancho espresado se les notifico el auto que antecede a los C. C. medidores y entendidos dijeron que aceptan d'ho encargo de
64 medidores y juraron a Dios y senal de la cruz de usarlo sino de lo grande contra persona alguna y firmaron conmigo ante los testigos.

JOSE BOLCOFF.
FRAN'CO RODRIGUEZ.
CORNELIO PEREZ.

Assa: RAMON RODRIGUEZ.

En seguida en presencia de mi el espresado juez y los d'hos medidores tomaron un cordel y con una vara de medir uso Mejicano teniendola en mano midedor cincuenta varas p'a hacer la referida medida y p'a constancia lo rubrique.

(Flourish.)

En el mismo rancho y en la referida d'ha siendo como las ocho de la manana yo el presente juez mande a los medidores nombrados se pongan para la medida de terrenos que har de hacer al ciud'no Majors; se comenso la medida teniendo el cordel al S. a N. en donde se midio cinco mil varas y se puso por mohonera el Molino de Agua de S. desde del Rio de S'n Lorenzo, donde empreza el monte luego desde W. a O. tres mil varas a braza——(Sello quarto; una cuartilla. Habilitada provicionalm'te por la aduana maritima del puerto de Monterey, en el departamento de los Californias, para
65 los anos de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

ALVARADO.
ANTONIO MARIA OSIO.)

los potreros de otro lado del Rio de S'n Lorenzo; en donde se puso por el mohonera un pino; quedando el diseno dibujado en la misma forma
[SELLO.] que se medio el terreno declarando a los d'hos medidores haver sen sitio ganado mayor y p'a constancia lo firmaron conmigo los C. C. medidores y testigos de assa.

JOSE BOLCOFF.
FRANC'O RODRIGUEZ.
CORNELIO PEREZ.
RAMON RLDRIGUEZ.

En el referido rancho en la f'ha ciud'no vecino Juan Jose Majors, acompanando al juez de paz d'ho lugar y testigos de assa dijo ciud'no Majors que en virtud de haber medido los terras de este rancho segun consta en las dilig's anteriores tomaron la verdaderas corporal y real posecion del espresado sitio de ganado mayor por una legua de longitud y tres mil vara de latitud pues le pertenece como puerto en el titulo obtiene de la concesion
qua de ella se tubo con f'ha 22 de Abril presente a'no el S'r Gobernador constitucional del partam't'o de Californias p'r las facultades que le sen conferidas en la misma f'ha corriente, entre y paseo por

ella, arranco yerbas y arboles y tena predas a las cuatro partes del viento he hiso otras seremonias y actos de posecion en senal de lo q'e dijo tomara d'ha trena y mando el sitado juez que desde entonces lo tubieron y reconoscan per verdadero senor y posedor de ella, de todo referido pidio d'ho ciud'no Majors que p'a memoria y con servacion de lo veni'ero de sus derechos por mi el repetido juez estendido una constancia lo que hace fue autorisado con testigos assa conquienes actuo por receptoria al falta de escribano publico que no lo hay segun derecho doy fee.

JOSE BOLCOFF
FRAN'CO RODRIGUEZ.
CORNELIO PEREZ.
RAMON RODRIGUEZ.

En la f'ha se devolvio este espedt'e al interesado en fojas 4 utiles p'a constancia lo rubrique.

Filed in office June 4th, 1852.

GEO. FISHER, *Sec'y.*

D.—Translation.

67 First stamp. Six dollars.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTONIO MA. OSIO.

Good for the years 1841 and 1842.

ANTONIO MA. OSIO.

Juan B. Alvarado, governor of the department of the Californias:

Whereas Juan Jose Crisostomo Majors, naturalized citizen and married to a Mexican lady, has petitioned for his personal benefit and that [SEAL.] of his family the land that Mr. Francis Moss formerly occupied, known by the name of Zayante, bordering on the village of Branciforte and mission of Santa Cruz, having previously complied with all the requirements concerning it, in conformity with the laws and regulations belonging thereto, I have, in the exercise of the powers conferred upon me and in the name of the Mexican nation, granted to him the said land, declaring it to be his property by these letters patent, without prejudice to the common interests of the inhabitants of the village of Branciforte
68 in regard to pasturage, water, timber, wood, &c., and subject to pay the rent that may be imposed upon him in case it should be found to belong to the public lands of said village, and upon the following conditions:

1st. He may fence it without injury to the roads, pathways, and servitudes, and shall enjoy it freely and exclusively in the manner he may deem most advantageous to his interest, whereon he shall build a house within one year, and it shall be inhabited.

2d. He will solicit from the proper authority that possession in judicial form be given him in virtue of this letter patent, by whom the boundaries shall be designated; at the end of which, besides the landmarks, he shall plant some fruit or wild tree of some utility.

3d. The land of which mention is made is longitudinally one league, and latitudinally one-half league, more or less, as explained in the diagram attached to the espediente.

The judge giving possession thereof shall have it measured in con-
69 formity with ordinance, and the surplus which may result remaining to the nation for its convenient uses.

4th. If he should contravene to these conditions, he will lose his right to the land, and it may be denounced by another.

Consequently, holding this title to be firm and valid, I direct that it be entered in the Book of Entries and be delivered to the interested party for his security and further ends.

Given in Monterey this twenty-second day of April, in the year one thousand eight hundred and forty-one.

JOHN B. ALVARADO.

MAN'L JIMENO, *Sec'y.*

This title is entered in the Book of Entries on Adjudications of Public Lands, at folio 4.

JIMENO.

His excellency the governor directs that this title be registered in the office of the prefect of the first district.

JIMENO.

San Juan de Castro, April 23, 1841.

Let it be entered.

JOSE F. CASTRO.

70 This title has been entered in the proper book, at folio 2, over in this prefecture of the first district.

MANUEL CASTANARES, *Sec'y.*

Fourth stamp. One cuartillo.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1840 and 1841.

(Signed) ALVARADO.
(Signed) ANTONIO MA. OSIO.

Mr. judge of the peace:

John Joseph C. Majors, of this vicinity, respectfully represents before you that, having obtained a grant of the tract of land known by the
[SEAL.] name of "Zayante," applies to you and asks that you will be pleased to give him judicial possession of the same, in conformity with the requirements contained in the 4th article of the title to said land, extended in his favor on the 22d April ultimo, herewith duly presented for the desired purpose.

Wherefore he begs that you may be pleased to give him the pos-
71 session he petitions for, by which he shall receive justice.

Santa Cruz, July 13, 1841.

JUAN JOSE CRISOSTOMO MAJORS.

In virtue of the foregoing petition, which has been presented and admitted, I, the judge, will proceed to take the measurement of the said land, fix its bounds, and give the judicial possession called for by the petitioner in this espediente. I appoint for the execution the 24th day of the present month, for which purpose written summons shall be issued to the neighboring landowners to appear.

Thus I, the judge of the peace, did decree, order, and sign, with the attesting witnesses with whom I act by delegate power and according to law for want of a notary public.

JOSE BOLCOFF.

FRANC'O RODRIGUEZ.
CORNELIO PEREZ.
ROMAN RODRIGUEZ.

In the rancho of Zayante, this 25th day of July, 1841, in execution of the foregoing order, the surrounding landowners of this rancho be-
72 ing present, who were summoned for the measurement and fixation of its lands and possession, I appointed as measurers citizens Francisco Rodriguez and Cornelio Perez, who, after having accepted their appointments and been sworn, shall proceed to the discharge of their duties.

Thus I, the judge, did decree, order, and sign, with the attesting witnesses.

JOSE BOLCOFF.

FRANC'O RODRIGUEZ.
CORNELIO PEREZ.
ROMAN RODRIGUEZ.

On the same date and in the said rancho, the foregoing act was notified to the surrounding landowners, who, having understood it, said that they did accept the aforesaid appointment of measurers, and they swore to God and the sign of the holy cross that they would perform their commission without detriment to any person, and they signed with me before the witnesses.

JOSE BOLCOFF.

FRANCISCO RODRIGUEZ,
CORNELIO PEREZ,
ROMAN RODRIGUEZ,
Assisting witnesses.

73 Then before me, the said judge, the above-mentioned measurers took a rope, and with a Mexican yard, holding it in hand, they measured off fifty varas with which to make the said measurement, in proof of which I sign it with my scroll.

At the same rancho, and on the same day, it being about 8 o'clock in the morning, I, the present judge, directed the aforesaid measurers to proceed to the measurement of the said ground of citizen Majors.

They commenced the admeasurement from S. to N. five thousand dollars designating for landmark the water-mill S. from the river of San Lorenzo to the commencement of the wood, thence from west to east three thousand varas, including the flats or pasturage on the other side of the river San Lorenzo, where they set a pine tree for landmark, giving to the land the form and dimensions shown in the diagram, the said measurers declaring that the said land was one square league.

In testimony whereof, they, the said measurers, signed with me and assisting witnesses.

JOSE BOLCOFF.

FRANCISCO RODRIGUEZ.
74 CORNELIO PEREZ.
ROMAN RODRIGUEZ.

At the aforesaid rancho, and on the same day, the citizen and neighbor Juan Jose Majors, accompanied by the judge of the peace and the attesting witnesses, said that the land of the rancho having been surveyed as stated in the aforegoing proceedings, he took bodily and real possession of the said

sitio de ganado mayor for one league longitudinally, and three thousand varas latitudinally, as belonging to him, being the same as expressed in the title of grant made on the 22d day of April of the present year, by the constitutional governor of the department of the Californias in virtue of the powers conferred upon him.

On the same day he entered into the land, pulled up grass and shrubs, and cast stones to the four winds, and performed other ceremonies and acts of possession, in consequence of which he said that he took the said land.

Whereupon I, the said judge, ordered that from thenceforward he
75 should be held as the true owner and possessor thereof, of all of which acts and proceedings the said citizen Majors asked to be furnished with an authenticated copy for his security now and for all time to come.

Thus I, the said judge, ordered and decreed before the assisting witnesses, with whom I act by delegate power according to law, for want of a notary public, there being none in this place, which I certify.

JOSE BOLCOFF.

FRAN'CO RODRIGUEZ.
CORNELIO PEREZ.
ROMAN RODRIGUEZ.

On the same day this espediente was returned to the interested party written on four sheets of paper, in proof of which I sign it with my scroll.

E. C.
R. P.

Filed in office Jund 4, 1852.
(Signed) GEORGE FISHER, *Sec'y.*

76 *E.—Transfer.*

This indenture, made the twenty-second day of May, in the year one thousand eight hundred and fifty-two, between Joseph L. Majors, of the county of Santa Cruz and State of California, a party of the first part, and Isaac Graham and William Ware, of the aforesaid county and State of California, parties of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand dollars, lawful money to him in hand paid by Isaac Graham, in the year one thousand eight hundred and forty-two, the receipt of which is hereby acknowledged, has remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim, unto the said Isaac Graham three-fourths and William Ware one-fourth, and to their heirs and assigns forever, in the proportion above expressed, all that piece or parcel of land lying and being situated in the county of Santa Cruz, known by the name of Zayante, and conveyed to the party of the first part by a deed from Governor Alvarado dated the twenty-second day of April, 1841, together with all and singular the tene-
77 ments, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part of, in, or to the above-described premises and every part or parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) J. L. MAJORS. [SEAL.]

Sealed and delivered in the presence of—
T. M. CAHILL.
JOHN PARROTT.

STATE OF CALIFORNIA,
County of San Francisco, ss:

On this twenty-second day of May, A. D. 1852, before me came Jo-
78 seph L. Majors, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official [SEAL.] seal in the city of San Francisco, the day and year first above written.

(Signed) L. W. SLOAT, *Notary Public.*

OFFICE OF THE BOARD OF COMMISSIONERS OF CALIFORNIA LAND CLAIMS.

I certify the foregoing to be a correct copy of an original.

GEORGE FISHER, *Sec'y.*

San Francisco, May 25, 1852.
Filed in office June 4, 1852.

(Signed) GEORGE FISHER, *Sec'y.*

79. *Exhibit No.* 1, *A. F., annexed to dep. of John Parrott.*

This indenture, made the twenty-second day of May, in the year one thousand eight hundred and fifty-two, between Joseph L. Majors, of the county of Santa Cruz and State of California, a party of the first part, and Isaac Graham and William Ware, of the aforesaid county and State of California, parties of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of one thousand dollars lawful money to him in hand paid by Isaac Graham, in the year one thousand *thousand* eight hundred and forty-two, the receipt of which is hereby acknowledged, has remised, released, and quitclaimed, and by these presents do remise, release, and quitclaim, unto the said Isaac Graham three-fourths and William Ware one-fourth, and to their heirs and assigns forever, in the proportion above expressed, all that certain piece or parcel of land lying and being situated in the county of Santa Cruz known by the name of Zayante, and conveyed to the party of the first part by a deed from Governor Alvarado dated the twenty-second day of April, 1841, together with all and singular the tenements, hereditaments, and appurtenances thereunto belong-
80 ing or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, or to the above-described premises and every part or parcel thereof with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, their heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal this day and year first above written.

J. L. MAJORS. [SEAL.]

Sealed and delivered in the presence of—
T. M. CAHILL.
JOHN PARROTT.

STATE OF CALIFORNIA,
County of San Francisco, ss:

81 On this twenty-second day of May, A. D. 1853, before me came Joseph L. Majors, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official [SEAL.] seal, in the city of San Francisco, the day and year first above written.

L. W. SLOAT, *Notary Public.*

STATE OF CALIFORNIA,
County of Santa Cruz:

I hereby certify that the foregoing is recorded in the Book of Deeds, vol. 1st, pages 334 and 335, of the records of the recorder's office of said county, and that the same was filed for record June 1st, 1852, at ½ past 4 o'clock p. m.

Attest: PETER TRACY, *Recorder.*

Filed in office Dec. 2, 1853.
(Signed) GEO. FISHER, *Sec'y.*

82 *Opinion of the board.*

ISAAC GRAHAM *et al.* } Zayanta, Number 260.
vs.
THE UNITED STATES. }

This is a claim for a tract of land situated in the county of Santa Cruz, containing about one-half of a square league of land.

The petitioner has offered in support of his claim—

1st. An original grant from Governor Alvarado to Juan Jose Crisostomo Major, dated April 22nd, 1841, in which the land is described by the name of Sayanta, to the extent of one league in longitude by half a league in latitude, as shown by the map in the espediente.

2nd. An original record of juridical measurement, from which it appears that the grantee was formally put in possession of the premises, granted by the proper officer, to the extent of one square league in length by three thousand varas in width.

3rd. A deed from Joseph L. Major, dated May 22nd, 1852, conveying the premises to the present claimants in the proportions of three-fourths to Isaac Graham and one-fourth to William Ware.

83 All these documents are properly proved and authenticated. It is also in proof that Joseph L. Major, the grantor in the last-mentioned deed, is the same person to whom the original grant was made. The per-

formance of the conditions by Major, and those holding and claiming under him, is satisfactorily shown, and the particular part granted can be located without difficulty by reference to the maps and other evidence in the case.

The proof is, in our opinion, sufficient to establish the validity of the claim, and a decree will be entered confirming the land to the claimants according to their respective rights and to the extent shown by the grant.

Filed in office June 26th, 1855.

(Signed) GEO. FISHER, *Sec'y.*

Decree of confirmation.

ISAAC GRAHAM AND WILLIAM WARE vs. THE UNITED STATES. } Number 260.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioners is valid, and it is hereby
84 decreed that the same be confirmed to them in the following proportions, to wit:

Three-fourths thereof to the said Isaac Graham and one-fourth to the said William Ware. The land of which confirmation is made is situated in the county of Santa Cruz and is known by the name of Zayanta, being the same which is now held and occupied by the claimants, and is of the extent of one league in length and a half league in width, a little more or less, as shown by the original grant, record of juridical possession, and map filed in the case, to all of which reference is hereby made for a more particular description.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office June 26th, 1855.

(Signed) GEO. FISHER, *Secretary.*

And it appearing to the satisfaction of the board that the land
85 hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

Secretary's certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing seventy-four pages, numbered from 1 to 74, both inclusive,
86 to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 260 on the docket of said board, wherein Isaac Graham *et al.* are the claimants agalnst the United States, for the place known by the name of Zayanta.

In testimony whereof, I have hereunto set my hand and affixed my private

seal, (not having a seal of office,) at San Francisco, California, this
[SEAL.] twenty-first day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed December 1, 1855.

JOHN A. MONROE, *Clerk.*

87 *Letter from Att'y General.*

Isaac Graham *et al.*, claimants, 260, Zayanta.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 31*st Dec.*, 1855.

You will please take notice in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed February 11th, 1856.

By CHEVERS, *Deputy.*

88 No. 161.

Petition for review.

To the honorable district court of the United States in and for the northern district of California:

THE UNITED STATES, appellants,
vs.
ISAAC GRAHAM *et al.*, appellees. } Zayante, No. 342.

The petition of the United States, by their attorney, represents that this cause is an application for a review of the decision of the board of land commissioners whereby the claim of the said appellees was confirmed, as appears by reference to the records in this case; that a transcript of the said record was filed in this court on the first of December, 1855; that a notice of appeal was filed on the day of ; and that the land claimed lies in the said district; that the said claim is invalid. Therefore appellants pray that said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,
A. GLASSELL, *Act'g U. S. Attorney.*

Endorsed: Filed 28th April, 1856.

CHEVERS, *Deputy.*

89 No. 342.

Answer.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.* } Zayante.

The respondents, for answer to the petition filed in this case, answer and

say: It is true that the lands mentioned in said petition, and in said transcript of the proceedings before the said board of commissioners, lie within the said northern district of California and within the jurisdiction of this court; but, then, respondents deny that their title to the said lands is invalid, and aver that the same is valid, and pray that the decision of the said board be affirmed and their title decreed to be valid.

ISAAC GRAHAM *et al.*,
By STANLY & KING, *their Att'ys.*

Endorsed: Filed April 28th, 1856.

CHEVERS, *Deputy.*

90 *Letter from Att'y Gen'l.*

CALIFORNIA LAND CLAIMS,
Attorney General's Office, 4th Dec'r, 1856.

SIR: In the case of Isaac Graham *et al.*, confirmed to the claimants by the commissioners—case No. two hundred and sixty, (260,)—appeal will not be prosecuted by the United States.

I am, respectfully,

C. CUSHING.

WM. BLANDING, Esq.,
U. S. Attorney, San Francisco.

Stipulation.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.* } Case No. 342, transcript 260.

In pursuance of a notice from the Attorney General of the United States, hereunto annexed, it is hereby stipulated and agreed that the appeal heretofore taken in this case from the decision of the United States land
91 commission to ascertain and settle private land claims in California be dismissed, and the notice of intention to prosecute said appeal, filed in this court by the Attorney General of the United States, be withdrawn, and that the claimants have leave to proceed under the decree of the said land commission in their favor, as under final decree.

WM. BLANDING, *U. S. Dist. Att'y.*
STANLY & KING, *Att'ys for Claimants.*

Endorsed: Filed Febr'y 9th, 1857.

W. H. CHEVERS, *Deputy.*

Order.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the ninth day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Hon. Ogden Hoffman, district judge.

92 THE UNITED STATES
vs.
ISAAC GRAHAM *et al.* } Case No. 342, transcript 260.

The Attorney General of the United States having given notice that no ap-

peal will be further prosecuted in this case, and a stipulation having been entered into by the United States district attorney for the dismissal of the appeal from the decision of the board of United States land commissioners heretofore rendered in favor of the claimants, on motion of the district attorney, it is ordered, adjudged, and decreed that the appeal pending in this court be dismissed, and that the claimants have leave to proceed under the decree of the land commission heretofore rendered in their favor, as under final decree.

OGDEN HOFFMAN, *U. S. Dist. Judge.*

Endorsed: Filed Febr'y 9th, 1857.

W. H. CHEVERS, *Deputy.*

93 *Order to return survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house, in the city of San Francisco, on Thursday, the 23d day of June, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* } L. Com., No. 260; D. C., No. 342.

On motion of Stanley & King, counsel for the claimants herein, it is ordered by the court that the surveyor general of the U. S. for the State of California return into this court plats of the two surveys made by J. Wallace, deputy surveyor, and returned to his office, of the tract of land called "Zayante," or "Syante," and that a certified copy of this order be served forthwith on the said surveyor general and on the U. S. attorney for this district.

Endorsed: Filed June 23d, 1859.

W. H. CHEVERS, *Clerk.*

(Here follow 2 maps, page 93.)

95 *Exceptions to survey by claimants.*

U. S. district court in and for the northern district of California.

ISAAC GRAHAM *et al.* *vs.* THE UNITED STATES. } "Sayante," or "Zayant," rancho.

Land comm's No. 260.—Court No. 342.

The confirmees except to the survey of the said rancho as made by John Wallace, deputy surveyor, under the instructions of the surveyor general of the 18th October last, and approved by the said surveyor general, and now before the court, for the following reasons:

First. Because in all cases where the area confirmed is less than that contained in the tract as described in the original grant and deseno, (as is apparent from the original documentary title and the evidence to be the fact in this case) the instructions from the Gen'l Land Office, and those of the surveyor general, expressly provide, and it is the law, that the confirmee shall have the right to select the area so confirmed to him anywhere within the extended limits of his grant and diseno, provided the same is taken in a com-

pact form and not interfering with the rights of another confirmee. And the survey now excepted to has been made in violation of the said rights and wishes of the confirmees, and embraces land not desired by them to be included in their survey, and excludes other portions which they
96 wished and desired to be embraced thereby, of which wish and desire the surveyor general had due notice.

Second. Because the western line of said survey has been so run as to cross the San Lorenzo River several times, whereby it is apparent that such a line is one no reasonable man would ever consider a proper or convenient boundary, and one which under the former government would never have been assigned to the grant.

Third. That it is manifestly made in violation of the instructions under which it purports to have been executed, for in them the deputy surveyor was directed as follows: "You will make your survey in accordance with the decree of confirmation as above set forth, and in accordance with the terms of judicial possession above set forth, paying particular attention to the following sentence, to wit, 'embracing the portrero on the other side of the river San Lorenzo;'" while an inspection of the plat of survey shows that it has been so made as to exclude portions of the portreros exhibited therein, and also entirely excludes at least one other, and not represented, portrero.

Fourth. Because the confirmees notified the surveyor general and his deputy that they desired the area confirmed to them to be located in a precise locality within the tract described in the original grant and diseno, the same to be located in a compact form, according to the lines of the public
97 surveys, and furnished him with a specific designation of the locality they had selected; but the said surveyor general and his deputy, in utter disregard of the wishes of the confirmees, and against their will, located the area confirmed to them in a place entirely different from the one selected by them as aforesaid.

For these reasons the confirmees pray for a decree rejecting the said mentioned survey, another and previous survey having been made under the direction of the said surveyor general which embraces the lands the confirmees claim to be entitled to under their confirmation and the said instructions.

STANLY & KING, *Att'ys.*

Endorsed: Filed July 16th, 1859.

W. H. CHEVERS, *Clerk.*

Exceptions to survey by claimants.

U. S. district court in and for the northern district of California.

ISAAC GRAHAM *et al.* *vs.* THE UNITED STATES. } Rancho "Sayante," or "Zayant."

Land comm'rs No. 260.—Court No. 342.

98 In this case it is an acknowledged fact that the tract of land described in the grant exhibited by the attached diseno, and of which judicial possession was given to the grantees, includes more land than has been confirmed.

The documents of title, diseno, and evidence, all show that the claim as granted extended to the crest of the hills or mountains west of the San Lorenzo. This fact is also clearly stated in the report of the surveyor, John Wallace, of his survey of May, 1858.

The instructions of the General Land Office to the surveyor general of California, and his general instructions to deputy surveyors, most positively provide that where the quantity confirmed is less than that contained in the tract described and shown by the original title-papers, the confirmee has the right to elect the particular lands to be included in his survey, provided such selection forms a compact body, and does not interfere with the specific claim of a third party. Under the instructions of the surveyor general of 13th March, 1858, Wallace, as his deputy, made a survey, and returned the notes thereof to surveyor general's office. In explanation of that survey he therein remarked:

"I commenced the survey on the 13th of May, 1858, by first making a careful reconnoissance of the ground, and hearing testimony as to
99 the judicial boundaries, from which it appears that the boundary on the west was always considered to extend to the top of the sierra, that distance having been given by the officer at the time of the judicial measurement, and always understood so by the previous owner, Joseph L. Majors.

"It is also stated in the act of judicial possession that the measures declared the land to be one square league, but as the confirmation is for a tract of land 5,000 varas long by 3,000 varas wide, I have located the western line rather less than half way up the sierra, and nearly parallel with the river San Lorenzo, taking the line of the Canada del Rincon Rancho for the southern boundary, and making the northern boundary a due east and west line, keeping the land in a compact form, and within the prescribed quantity."

The survey is within the extended limits of the tract referred to in the original grant and diseno, embraces the lands desired by the confirmee, is compact in form, and interferes with no other claim The thrown-out or excluded portions of the original tract now form upon three sides the public lands, as shown by the plat of survey. The right of the confirmees to claim the confirmation of this survey, under the instructions before referred to, is considered to be clear and unquestionable.

This survey did not, however, meet the views of the surveyor general, and he has refused to approve it. The reasons for such refusal are not known, and it now stands as the naked exercise of assumed despotic power.
100 Wallace was instructed to make another survey, which he has done by now excluding a large body of land on the west side of the first survey, and including a like area on the east side of the former survey, and this second survey is now also before the court as approved by the surveyor general.

If it is true that the surveyor general has the power to reject or confirm a survey according to his own wishes, and that such decision by him is final and conclusive, then the existing course of proceedings in the U. S. district court in relation to surveys is in substance and reality a mere mockery, and the district judge becomes the mere instrument by which all the acts of the surveyor general are to be clothed with the dignity of judicial approval, however much the judge may differ in opinion from that officer, after a full investigation of the subject.

If, however, such is not the fact, and the judge, instead of being a mere ex-officio registrar and official approver of the views of the surveyor general, is to examine the subject-matter, and to decide according to the principles of law justice upon the case, and from all the lights before him say whether or not, in his opinion, the survey embraces the particular tract to which the claimant is entitled under his confirmation and acknowledged right of selection, then we have a tribunal to which we can confidently appeal

whenever the surveyor general in his action ceases to be governed, as
101 we believe, by those principles of justice and equity which are to guide an officer in the exercise of his discretionary official duties in all cases when they have reference to individual rights, for surely official discretion is limited and controlled by the well-settled principles of right and justice, and not left to be exercised in unrestrainable violation of both.

Without proceeding at the present time to examine whether or not the surveyor general has this arbitrary right of rejecting surveys when made in conformity to his own instructions and to order new ones, we raise the following objections to the second survey, as made under his orders of 18th October last, and which he has approved:

1st. Because it is a survey made in violation of the wishes of the confirmee, inasmuch as it embraces lands he does not claim under his acknowledged right of selection, and excludes those he desires to take.

2d. That inasmuch as the western line has been so run as to cross the San Lorenzo River several times, it is apparent that such a line is one which no reasonable man would ever consider a proper, just, or convenient boundary of a claim, and is certainly, and which under the former government would never have been assigned to the grant.

3d. That it is manifestly made in violation of the instructions under which it purports to have been executed, for by them the deputy was told:
102 "You will make your survey in accordance with the decree of confirmation as above set forth, and in accordance with the terms of the judicial possession above set forth, paying particular attention to the following sentence, to wit, embracing the portrero on the other side of the river San Lorenzo;" and an inspection of the plat shows the line has been so run as to exclude portions of the exhibited portrero, and the evidence shows that at least one of them has been entirely excluded.

For these reasons the confirmee prays a decree of the court rejecting the last-mentioned survey and confirming the first one, as embracing the land he has selected, and to which he is entitled under the confirmatory decree.

STANLY & KING, *Att'ys.*

I hereby consent that the foregoing be filed as an additional exception to the survey approved by the surveyor general.

TULLY R. WISE,
Acting U. S. Dist. Att'y.

Endorsed: Filed July 18th, 1859.

W. H. CHEVERS, *Clerk.*

103 *Stipulation.*

U. S. district court.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.* } No. 342.

It is hereby stipulated and agreed that the attorney for the United States may file his exception to the survey of the land claimed herein, known as the "Zayante Rancho," on or before the 15th day of August, 1859.

San Francisco, July 29th, 1859.

STANLY & KING, *Att'ys.*

Exceptions to survey by U. S.

U. S. district court.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.* } No. 342.—"Zayante."

And now come the United States by their attorney, P. Della Torre, and except to the survey made and approved by the U. S. surveyor general for Cala., of the lands claimed in this case; a plat of which survey was filed in the clerk's office of said court on the 9th day of July last. And for exception to the said survey the United States, by their said attorney, allege as follows:

104 1st. That the decree of the board of U. S. land commissioners confirming the claim to the said lands, directed reference for more particular description of said lands to be had to the original grant, record of juridical possession, and map on file in the case.

2d. That the said survey has not been made in accordance with the act of juridical possession made under the authority of the Mexican government. Wherefore the United States pray this court to reject the said approved survey as erroneous, and that an order be entered directing the said U. S. surveyor general for California to cause a new survey of said lands to be made in accordance with said act of juridical possession, and that he return a plat of the same when made to this court for its approval.

San Francisco, Aug. 15th, 1859.

TULLY R. WISE,
Acting U. S. Att'y.

Endorsed: Filed August 15th, 1859.

W. H. CHEVERS, *Clerk.*

105 *Dep. of Ramon Rodriguez.*

United States district court, northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.*

SAN FRANCISCO, *September* 13, 1859.

On this day, before T. R. Wise, esq., by consent, Ramon Rodriguez, a witness produced on behalf of the United States in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: Tully R. Wise, acting United States district attorney, and S. D. King, for claimant.

1st question by the district attorney. What is your name, age, and place of residence?

Answer. My name is Ramon Rodriguez; I am sixty-two years of age, and I live in Santa Cruz County.

Ques. 2. Do you know the Zayante Ranch in that county, now occupied by Captain Isaac Graham?

Ans. Yes, sir.

106 Ques. 3. State if you were present at the time juridical possession was given to Wm. Majors, who gave possession, and what did you do, and who assisted you?

Ans. The alcalde, Jose Bolcoff, Mr. Majors, Jose Comelio Peres, Juan Jose Felix, and myself, were present; Jose Comelio Peres and myself carried the cord with which the measurement was made, and we were both present during the whole of the measurement.

Ques. 4. State in what manner the measurement was made.

Ans. We started from the first pine that was marked in a westerly direction; one went on horseback, and carried a large pole, or long stick, and marked the distances; we were all on horseback, and one near carried a pole; two of us held the cord, and dropped a branch at each length of the cord. We measured two lines, one from east to west, the other from north to south.

Ques. 5. Do you know the length of each line in varas?

Ans. No, sir; I do not.

Cross-examination.

Ques. 6. When the measurement was concluded did the alcalde say
107 anything to Majors about the extent of the possession then given to him?

Ans. I do not know; I heard nothing about it.

Ques. 7. Did you consider the possession then given as including the portrero on the west side of the San Lorenzo River?

Ans. Yes, sir.

his
RAMON + RODRIGUEZ.
mark.

Sworn to before me this 15th Sept., A. D. 1859.

GEO. PEN. JOHNSON,
U. S. Commissioner.

Endorsed: Filed Sept. 14, 1859.

W. H. CHEVERS, *Clerk.*

108 *Dep. of Thos. W. Wright.*

United States district court, northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.*

SAN FRANCISCO, *Sept.* 13, 1859.

On this day, before T. R. Wise, esq., by consent, came Thomas W. Wright, a witness produced on behalf of the United States in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present: Tully R. Wise, acting U. S. district attorney, and S. D. King, for claimants.

1st question by district attorney. Please state your name, age, and place of residence, and occupation.

Ans. My name is Thomas W. Wright; age, thirty-four years; residence, Santa Cruz County, and am a surveyor.

Ques. 2. Do you know the ranch occupied by Captain Graham called the Zayante?

109 Ans. I do.

Ques. 3. Have you been upon that ranch recently in order to ascertain the lines of juridical possession, and with whom?

Ans. I have been there recently with Jose Camelio Peres and Otis Ashley; the Peres who testified here to-day is the person who went with me.

Ques. 4. Did Camelio Peres point out to you upon the land the manner in which the measurement was made when juridical possession was given?

Ans. He did.

Ques. 5. Please examine "Exhibit No. 1," annexed to the deposition of Jose Camelio Peres, and verify upon that exhibit the manner in which juridical possession was given as described to you by Peres.

Ans. He took me to a pine tree on the side of the road, marked on this Exhibit "No. 1;" (the pine marked x on the west side of it;) this he said was the point of beginning of the measurement; we then went in a westerly direction, and crossed the Zayante and San Lorenzo Rivers, and through a small portrero to a pine which stands in a monte on the river edge, and near the edge of the protrero; this pine I found no mark on, but a piece chopped out of the side of it; this he said was for the width of the ranch;
110 the blue line laid down on this exhibit from 1 to 2 represents that line; it is about one hundred and seven chains long, and you can see one pine from the other. He then showed me where they commenced to measure for the length of the ranch; he showed me where they measured the line going towards the north to a point on this exhibit marked Alder-tree No. 4; but there is no tree there; he says the tree is down, and it is very near where there was once a mill; the dotted line on the exhibit from No. 3 to 4, or from the oak to the mill, he says this measured for the length of the line. The oak at 3 stands in a rincon in the potrero, and at the edge of the monte; and further west the lines they measured is through the open land, and he says they measured the lines in the open land to avoid the brush on the sides, which they would have found in any other place. On the Exhibit No. 1 the San Lorenzo River should be a little further to the east, as is shown by the blue dotted line; the pine is about thirty-six or seven chains east of the west line of the Zayante Ranch, as laid down in this exhibit. The position marked large potrero, on the official survey, is very nearly correct, and the pine which I have described is on the west side of the potrero; the pine which I have been describing stands on a little hill, and about thirty yards west of the edge of the potrero.

Cross-examination.

111 Ques. 6. At whose instance or request did you go with Peres to make the examination on the ground which you have described?

Ans. At Mr. Ashley's request.

Ques. 7 Have you received, or do you expect to receive, any compensation from Mr. Ashley for this examination?

[*Note.*—The district attorney objects to this question as irrelevant.]

Ans. For the measurements which I made on the ranch he has paid me; he paid me five dollars for it; and for the examination I forget whether he has paid me or not, but he promised to pay me for my day's work.

Ques. 8. Does Mr. Ashley live on the rancho, as claimed by Captain Graham? And if so, how long?

Ans. He lives on the rancho that Captain Graham claims, and I think he has been there for two or three years.

Ques. 9. Do you know whether Mr. Ashley has been concerned in cutting timber or pealing bark from the trees on the land claimed by Captain Graham?

[*Note.*—District attorney objects to this question, because it is irrelevant.]

112 Ans. I never saw him do it; but I know from Mr. Ashley's statements, and from others, that he has; but they say that he has been careful to keep off the official survey since the surveyor was there and made it.

THOS. W. WRIGHT.

Sworn to before me this 13th Sept., A. D. 1859.

GEO. PEN. JOHNSON,
U. S. Commissioner.

Endorsed: Filed Sept. 14, 1859.

W. H. CHEVERS, *Clerk.*

Dep. of J. L. Majors.

United States district court, northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.*

SAN FRANCISCO, *Sept.* 13, 1859.

On this day, before T. R. Wise, esq., by consent, came Joseph L. Majors, a witness produced on behalf of the claimants in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of

113 the said board of commissioners, and was duly sworn, and testified as follows.

Present: Tully R. Wise, acting U. S. district attorney, and S. D. King, for claimant.

Questions by claimants' counsel.

Ques. 1. Please state your name, age, and place of residence.

Ans. Joseph L. Majors, fifty-three years of age, and I reside in Santa Cruz County, near the town of Santa Cruz.

Ques. 2. If you were present when juridical possession was given to you of the Zayante Ranch, please state what Alcalde Bolcoff then put you in possession of.

Ans. I was there at the time the possession was given by Bolcoff, and I received it; he put me in possession of the Zayante Ranch; he raised his hands up, and said he gave me possession to the tops of the mountains, all around. We were then in a little house in the valley.

Ques. 3. What do you consider the quantity within these lines?

Ans. I would think it would be seven or eight leagues.

Ques. 4. Was not the land west of the San Lorenzo River, and up

114 to the top of the hills, always considered and possessed as part of the ranch?

Ans. Yes, sir; it was considered so.

Cross-examination.

Ques. 5. Did you testify before the land commission in favor of the United States?

Ans. Yes, sir.

Ques. 6. In the answer to the 8th question of that examination before the land commission, you say: I received the juridical possession according

to the map in lead-pencil marked Exhibit No. 3, to said Balcoff's deposition; did not receive it by any such measurement as Bolcoff describes in his depositions; there was no such thing done that day, but it was done, as I have before described, after the measurement was made in which I received possession. Bolcoff waved his hand round, saying, I give you possession of all the lands embraced within the hills, all around. Please explain whether, in your answer in this present deposition, you mean to say there was no measurement made, and that the possession given was only such as ours indicated in the 2d answer in this deposition.

115 Ans. That all comes on right enough so far as I understand it; there was a measurement of some lines, but it was not measured all round. After the measurement he put me in possession, as I have stated.

Ques. 7. Why was any measurement made if possession was intended to be given by a wave of the hand?

Ans. They always measure before they give possession.

Ques. 8. How much land did you petition for?

Ans. I petitioned for a league.

Ques. 9. Do you know the length of the line running east and west as measured by Bolcoff for the width of the ranch?

Ans. Two thousand seven hundred and fifty or eight hundred varas; that is what he stated, but I forget which.

Ques. 10. Do you know the length of the line running north and south which he measured?

Ans. It was five thousand varas; he said it was five thousand varas when he got through measuring.

Ques. 11. Look at Exhibit No. 1, and point out, as near as you can, the little house in the valley where Bolcoff stood when he gave possession, as mentioned by you in your 2d answer.

116 Ans. The house stood about 200 yards from the east end of the line measured for the width of the ranch.

J. L. MAJORS.

Sworn to before me this 13th day Sept., A. D. 1859.

GEO. PEN. JOHNSON,
U. S. Commissioner.

Endorsed: Filed Sept. 14th, 1859.

W. H. CHEVERS, *Clerk.*

Dep. of Otis Ashley.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
ISAAC GRAHAM *et al.* }

SAN FRANCISCO, *Sept. 13th*, 1859.

On this day, before T. R. Wise, esq., by consent, came Otis Ashley, a witness produced *produced* on behalf of the United States in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

117 Present: Tully R. Wise, acting U. S. district attorney, and S. D. King, for claimant.

Questions by the U. S. district attorney.

Ques. 1st. What is your name, age, and place of residence?

Ans. My name is Otis Ashley; aged thirty-nine years; and I reside in Santa Cruz County.

Ques. 2. Do you know the Zayante Ranch claimed by Mr. Graham?

Ans. Yes, sir.

Ques. 3. Please examine the plat of the approved survey in this case, and say if your residence is included in that survey.

Ans. Yes, sir, it is, just four chains from the west line.

Ques. 4. Have you recently been over the ground in order to ascertain the lines of juridical possession given to Mr. Majors, and with whom?

Ans. I have been over it with Thomas W. Wright, Jose Camelio Peres, the same persons who testified here to-day in this case.

Ques. 5. Please examine Exhibit No. 1, attached to the deposition of Jose Camelio Peres, and describe the lines of juridical possession as
118 pointed out to you by Peres on the ground.

Ans. We went to the pine tree put down here as number "1;" Peres said that was the point from which they commenced measuring; the tree was marked with a "X;" we then went with Peres to a pine tree on the west side of the San Lorenzo River, marked "2" on this exhibit; this tree had a block cut out of it some six or eight inches square; he showed us where the oak tree stood, No. 3, but we did not go to it; we then went to No. "4," the old mill; Peres said the tree he could not find, it must be down, but it was close by where they were going to build a mill at that time, and we saw the ruins of the mill.

Ques. 6. Do you claim to be now on the public land?

Ans. I do.

Ques. 7. Do you know of any Spanish grant binding on the west line of the Zayante Ranch, as delineated on the plat of the approved survey?

Ans. I do not now.

Cross-examination.

Ques. 8. How long have you lived on what Mr. Graham claims as the Zayante Ranch?

119 Ans. I have lived there one year and eleven months, since I moved on the claim I now live upon.

Ques. 9. Did you ever run or lease any saw-mill from Captain Graham on that ranch? And if so, how long ago?

Ans. I did; it was about two years and a half ago that I commenced; I was running his mill about one year and a half.

Ques. 10. Did Captain Graham then claim the potrero and side of the hills west of the San Lorenzo River?

Ans. Yes, sir, he claimed it all to the top of the mountain.

Ques. 11. After you ceased to run the mill alluded to, have you been engaged in cutting timber and pealing bark from the trees on the land so claimed by him near the San Lorenzo River, and has he ever protested against your so doing?

[*Note.*—The dist. att'y objects to this question as irrelevant.]

Ans. I never cut any timber until after the first survey was made by Mr. Wallace, without it was a few hoop-poles; after Mr. Wallace made the first survey last May a year ago, I went up on the side of the mountain west of the survey and cut oak timber and pealed tan-bark; since the last
120 survey was made and approved I have cut timber west of that survey and included in first survey, but if my memory serves me right, Captain Graham never has said anything to me about cutting timber.

Ques. 12. Did you and others ever attempt by force to prevent any person

using Captain Graham's mill from going into the potreros and taking away saw-logs which had been cut?

[*Note.*—Same objection as to the last question.]

Ans. There is a potrero there that I live on, and which is in my quarter section of land as I claim it. I prevented George Evans, who was using Captain Graham's mill, from cutting or hauling anything from that potrero or from my claim.

Ques. 13. When he went on to your present claim, was there any house or fence-rails there?

Ans. There was some fence-rails but no house there.

Ques. 14. Do you know that at that time Captain Graham had saw-logs there, and that a house had been moved there by a man named Block?

Ans. I know that there was a house moved off of there in March or April, 1859, six months before I moved there; I suppose that Block took it, but I did not see him take it. The saw-logs, all that I considered worth
121 sawing, I had sawed up while I was running the mill.

Ques. 15. Did you take any measures to prevent the approval of the first survey made by Wallace? And if so, what were they?

Ans. I did; I considered it government land; got some depositions, and came down and saw Mr. Mandeville myself; I got up a petition.

Re-direct.

Ques. 16. Have you ever cut any wood or committed any trespass of any description within the lines of the survey approved by the surveyor general?

Ans. I have not, except I might have cut two or three trees near my house and burnt them up

Ques. 17. Running a line on Exhibit No. "1," attached to the deposition of Peres, north and south, intersecting pine tree No. "2," does the exception made in your last answer apply to any land east of that line?

Ans. I have cut no timber east of that line.

OTIS ASHLEY.

Sworn to before me this 15th day Sept., A. D. 1859.

GEO. PEN. JOHNSTON,
U. S. Commissioner.

122 Endorsed: Filed Sept. 14th, 1859.

W. H. CHEVERS, *Clerk.*

Dep. of Jose Cornelio Perez.

United States district court, northern district of California.

THE UNITED STATES }
vs. }
ISAAC GRAHAM *et al.* }

SAN FRANCISCO, *Sept. 13th*, 1859.

On this day, before T. R. Wise, esq., by consent, came Camelio Peres, a witness produced on behalf of the United States in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 260 on the docket of the said board of commissioners, and was duly sworn and testified as follows, his evidence being interpreted by Richard Tobin, a sworn interpreter.

Present: Tully R. Wise, acting U. S. district attorney, and Stanley and King, for the claimant.

1st question by U. S. district attorney. What is your name, age, and place of residence?

123 Ans. My name is Jose Camelio Peres; I am forty-nine years of age; my residence is in Santa Cruz county.

Ques. 2. Are you acquainted with the Zayante Ranch, in Santa Cruz county, granted to J. L. Majors, now occupied by Isaac Graham, and how long have you known it?

Ans. I am acquainted with it, and have known it as long as I can remember.

Ques. 3. Did you ever assist in giving juridical possession while the ranch was owned by Mr. Majors? And if so, state the time.

Ans. Yes, sir; I was present when Mr. Majors got possession; I don't know what year it was. No other possession has been given since to my knowledge.

Ques. 4. State the name of the magistrate who gave him the possession.

Ans. The then alcalde, Jose Bolcoff.

Ques. 5. Did you assist at the ceremony of giving the juridical possession, and in what capacity?

Ans. I was there assisting in the measurement and carrying the rope with which the measurement was made; Mr. Ramon Rodriguez assisted me in carrying the rope.

124 Ques. 6. Describe the place where the measurement was first commenced.

Ans. On one side of the main road there was a pine tree which was marked with a cross; this pine tree was the starting point.

Ques. 7. State the direction which you measured from that point, and the distance?

Ans. We then ran down the Zayante River, and then to the San Lorenzo River, and from there to the potrero; just after passing the potrero we came to a hill where there were some pine trees growing; we also marked one of these trees—a large one; the line we ran from the first pine tree to the last one was the width or breadth of it; we then came back and crossed these two rivers and the plain of Zayante, to where there was an oak tree at the entrance of the "Monte;" we marked this tree with a cross, and from this point we started to measure the ranch lengthwise; we then crossed the Zayante River again, and ran the line along the bank of the river; we followed up the stream until we reached a place where they were going to build a water-mill, at which place there was a tree called an "Alamillo," which we also marked. The measurement stopped at this point, and we returned.

Ques. 8. Then I understand the only measurement you made was two

125 lines, one for the width and the other for the length of the ranch?

Ans. Yes, sir; there were only four sticks or trees marked, one at each end of the line we measured lengthwise, and one at each end of the line we measured crosswise. I saw nothing more than this.

Ques. 9. Please examine this sketch, marked "Exhibit No. 1," attached to your deposition, and state if you can point out upon it the two lines you have described.

Ans. I can't tell by this map.

Ques. 10. Have you been over the ground lately and pointed out those lines to any one, and if you have, to whom?

Ans. Yes, sir; I was there lately with Mr. Ashley and Mr. Wright, for that purpose, and I showed them the points I have described.

The United States district attorney here closed his examination, and Mr. S. D. King commenced his cross-examination.

Cross-examination.

Ques. 11. Did the alcalde, Bolcoff, do anything after the lines were run, to show the extent of the possession then given to Majors?

126 Ans. After the measurement Mr. Majors took possession in the usual way, and went through the ceremonies that were common in those times; I don't know what the alcalde did after that; he was around there with his papers, writing and talking with the parties; I heard tell Mr. Majors to take possession.

Ques. 12. Did he not tell him that he gave him possession to the top of the hill west of the San Lorenzo?

Ans. I don't know what he said to him, because I was carrying the cord.

Ques. 13. Did you understand that the potreros west of the San Lorenzo were included in the possession then given to Majors?

Ans. Yes, sir, I did; because the measurement showed that.

The examination was here closed.

his
JOSE CAMELIO ⋈ PERES.
mark.

Sworn to before me this 13th day of Sept., A. D. 1859.

GEO. PEN. JOHNSTON,
U. S. Commissioner.

Endorsed: Filed Sept. 14th, 1859.

W. H. CHEVERS, *Clerk.*

(Here follows map, page 126.)

127 *Stipulation submitting case.*

U. S. district court.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* } No. 342.—"Zayante."

SAN FRANCISCO, *Oct. 20th*, 1859.

It is hereby stipulated and agreed that this case be submitted upon briefs filed this day.

TULLY R. WISE,
Acting U. S. Att'y.
STANLEY & KING,
Att'ys for Claimant.

Endorsed: Filed Oct. 20th, 1859.

W. H. CHEVERS, *Clerk.*

128

129 *Opinion.*

District court of the United States, northern district of California.

THE UNITED STATES *vs.* ISAAC GRAHAM. }

This case comes up on exceptions filed to the survey, both by the U. S. and the claimant.

In the grant the land is described as "that formerly occupied by Mr. Moss, known by the name of Zayante, bordering on the village Branciforte, and the mission of Santa Cruz.

The 3d condition states that the land of which mention is made is longitudinally one league and latitudinally one half league, a little more or less, as explained by the diseno attached to the espediente."

Under this grant a formal judicial measurement was made and possession was given, the record of which is found attached to the espediente in the case. The diseno is not found in the espediente, but a map is produced, which the officer identifies, according to which he gave the possession.

This diseno, in a rude but intelligible manner, indicates the tract of
130 country out of which the quantity granted was to be taken, but no boundaries are delineated, nor are the villa of Branciforte or the mission of Santa Cruz laid down upon it.

The act of possession therefor furnishes the only means of ascertaining the true location of the small tract which was granted.

The record of that proceeding, after reciting the usual formal preliminaries, sets forth "that the measurement was commenced holding the cord from S. to north, in which direction they measured 5,000 varas and placed as a landmark ('mohonera') the water mill; on the south from the river San Lorenzo where the monte begins, from whence from west to east 3,000 varas, (including the potreros on the other side of the river,) where they set a pine tree for landmark, giving to the land the form and dimensions shown in the diseno, the said measurers declaring that the land was 'un sitio de ganado mayor.' At the aforesaid rancho, and on the same day, the citizen Juan Jose Majors, accompanied by the judge of the peace and the attesting witnesses, said that the land of the rancho having been surveyed as
131 stated in the foregoing proceedings; he took bodily and real possession of the said sitio de ganado mayor, for one league longitudinally and 3,000 varas latitudinally as belonging to him, being the same expressed in the title, &c."

The record then states that the grantee "entered on the land, pulled up grass and shrubs, and cast stones to the four winds, and performed other ceremonies and acts of possession, in consequence of which he said that he took the said land."

It will be observed that the language of this record, especially in the important part which describes the measurements, is somewhat obscure, owing probably to the fact that Bolcoff, the magistrate by whom the possession was given, was a Russian, and imperfectly acquainted with the Spanish.

It is to be observed, too, that the diseno produced is not attached to the espediente, nor found in the record of the judicial measurement. Its identity with that formerly attached to the espediente, and used when the possession was given, is sworn to by Bolcoff, whose testimony we shall hereafter see is not wholly reliable. And if the statement in the record, that there was "given to the land the form and dimensions shown in the diseno," (or
132 more correctly translated, leaving the diseno drawn or sketched (dibujado) in the same form as the land was measured,) means that the land as measured was delineated in the diseno, then it would seem that the diseno produced is not the one marked on that occasion, for no such lines are upon it. It is also to be observed that the original espediente is not put in evidence in the cause; but it is stated in the brief on the part of the U. S. that by that espediente it appears that the land was first granted to Joaquin Buelna by Figueroa, in 1834; that it was denounced by and granted to Moss in 1839, and was finally petitioned for and granted to Majors in 1841.

In the brief filed on the part of the claimants these facts are not denied, and it is testified by Jose Bolcoff that he gave three judicial possessions of the land; the first to Buelna, the second to Moss, and the third to Majors. As the land granted to the latter is described in the grant as that formerly occupied by Moss, it would seem that the grant and judicial possession given to him would furnish important evidence to remove any doubts
133 as to the location of the tract intended to be granted to Majors. If, therefore, I considered it necessary to enable me to arrive at a satisfactory determination of the questions now presented, I should not hesitate to direct the expediente to be filed.

But it has appeared to me that notwithstanding the obscurities alluded to, the record of judicial possession discloses the location and dimensions of the tract whereof Majors was put in possession with sufficient certainty to enable me to determine the present controversy.

It appears from that record that only two lines were measured, viz: one longitudinally from south to nortl 5,000 varas in length, and one latitudinally from west to east 3,000 varas in length. The commencement of the north and south line is not stated, but its termination, viz: a water mill, is distinctly mentioned as a boundary mark, established by the judicial officer. This mill is marked on the diseno, and its position is undisputed.

The latitudinal line is described in the record as commencing where the monte begins beyond the river San Lorenzo, (which is probably the meaning of the words desde del Rio de San Lorenzo.) But at all events it
134 is clearly described as running from where the monte begins, from west to east 3,000 varas to a pine tree which was established as a mojonero, and including the potreros on the other side of the San Lorenzo. There can therefore be no doubt that the land of which possession was given is a tract 5,000 varas long and 3,000 varas wide, on the northern boundary of which was the mill, and on the eastern a pine tree.

Two of the assisting witnesses have testified in the case. Both depose that only two lines were run, and Perez states with precision, and in entire conformity to the act of possession, the commencement and termination of each of these lines. He identifies a pine tree on the edge of the monte as the point of beginning of the east and west line, and also the pine tree which, as stated in the act of possession, was established as a boundary mark at its termination.

He also states that the point of beginning of the north and south line, and assigns to it a position on the map corresponding nearly exactly with that of the point at which Bolcoff swears he commenced to run the north and south line.

To meet this testimony, and to establish if possible that the rancho
135 was surveyed so as to include on the west the valuable timber lands which are the subject of dispute, the claimants have examined Jose Bolcoff, the magistrate who gave the possession. This witness states that he marked a large pine tree as the commencement of the line between the ranch and that of San Augustin; that this pine tree is situated near the centre of the largest cluster grove of trees represented on the map, (the diseno;) that the boundary line runs from thence N.NW. to the mill represented on said map by a cross and circle, near which and to the north of it an oak tree was marked as a corner.

"Thence he ran the line S. west, including the Corral Viejo, and crossing the Arroyo de San Lorenzo, to a point on the sierra where a large redwood tree was marked as a corner; thence south-southeast a straight line to another redwood tree marked as a corner; thence a straight line N.N. east to the place of beginning."

But it is clear from the evidence that the four lines thus described by Bolcoff were not run by him.

The two witnesses who assisted at the measurement testify that only two lines were run, one for the length and the other for the width. And their statement is corroborated by Majors, the grantee, who describes the
136 lines run in nearly the same terms as Perez, except that he thinks the latitudinal line was 3,700 varas long. But as to the fact that only two lines were run, and the points at which each began and ended, the witnesses are entirely agreed. But the testimony of Bolcoff is still more emphatically contradicted by the act of possession, signed by himself and produced by the claimants. In that record it is distinctly stated that two lines were run, one 5,000 varas long to the molino or mill, and the other 3,000 varas long from the beginning of the monte to a marked pine tree, and the dimensions of the tract are again stated in the subsequent part of the record, which describes the entry of the grantee on the land.

If, then, it were legally permissible to contradict by parol a record of this description, and to show that the tract whereof possession was given was different and much larger than that described in the act of possession, the evidence in this case is insufficient to raise even a doubt on the subject. The claimant himself seems to be aware that the measurement as stated by Bolcoff could confer no rights to all the land included within it, but that the dimensions of the tract must be as stated in the grant, (viz: a
137 league by ½ a league, more or less,) or as stated in the act of possession, (5,000 varas by 3,000 varas.) The survey for which he contends embraces only a tract of that extent, and it is made to extend to and include the timber lands on the west only by neglecting entirely the call for the molino, which Bolcoff admits he marked as a corner, and which is stated as a boundary mark in the act of possession, and adopting as the controlling boundaries lines of which no mention is made in the act of possession, the location of which rests on the testimony of Bolcoff alone, but which in fact were never run.

That the molino, or the oak tree near it, was established as a corner on the NE. is clear from all the testimony. To the conclusive evidence afforded by the act of possession and the testimony above referred to may be added that of Weeks, who swears that he drew the diseno produced by the claimant. That "at the S. east corner of the rancho is the place called the rincon, where we used to saw lumber; at the northeast corner is the place where we had a small grist-mill. A line run from the rincon to the place where the grist-mill was would be on the east side of the river San
138 Lorenzo, and would be on the eastern side of the rancho."

Wright, a surveyor, who ran out some of the lines of the rancho at the request of the claimant, and assisted by Bolcoff, testifies that they started at the place of beginning pointed out by the latter, and which seems to be the same as that mentioned by Perez as the commencement of the S. and N. line; thence he ran to a pine tree pointed out to him by Bolcoff, and which also corresponds with the pine tree mentioned by Perez as the termination of the west and east line; and thence to an oak which had the appearance of having been marked, at the root of which was a stone, which Bolcoff said was placed there by his order. This spot is indicated as a corner on the map, and is near the point marked "molino."

On the claimant's own showing, as well as from all the testimony in the case, it is clear that the eastern boundary of the land whereof the grantee received the possession was a line drawn from the oak tree near the molino, to the pine tree mentioned in the act of possession as the termination of the east and west line, and identified by Perez and Wright.

If, then, the rancho extends to this line on the eastward, it cannot
139 also extend on the west to the crest of the hills without disregarding entirely the measurement of the line run for width by the judicial officer, nor without including in the survey a much greater extent of land than is called for in the grant, or mentioned in the act of possession.

We have already seen that the crest of the hills on the west is nowhere mentioned as a boundary, either in the grant of the act of possession, nor have I been able to discover on what ground it is claimed that that line should form the western boundary, unless it be the statement of Majors.

This witness testifies that "after the measurement was made Bolcoff waved his hand around, saying I give you possession of all the land embraced within the hills all around." "That," the witness adds, "would embrace 8 or 10 leagues of land."

In a second deposition, taken after the return of the survey to this court, the same witness states that "Bolcoff raised his hands and said he gave possession to the *tops* of the hills all around."

The difference between these two statements is of some importance, for the lands embraced within the hills all around might very reason-
140 ably be deemed to be founded by their base, and not by their crest. But both of these statements are contradicted by the act of possession. That record, as has so often been mentioned, states explicitly the longitudinal and latitudinal dimensions of the track and the boundary marks established, and recites that the grantee took possession of a piece of land one league long by 3,000 varas wide.

The expression "sitio de ganado mayor" is evidently used inaccurately, for the measurements previously recited, and the words which immediately follow show what were the dimensions of the tract so denominated.

The sentence reads "the lands of the said rancho having been surveyed as stated in the aforesaid proceedings, he (the grantee,) said that he took bodily and real possession of the said sitio de ganado mayor, *for* one league longitudinally, and 3,000 varas latitudinally."

There are some considerations of a more general nature which tend to confirm the conclusions drawn from the terms of the act of possession.

The rancho was petitioned for and granted under the name of Zayante.

The tract delineated on the diseno is represented as lying on both sides of that stream, although the potreros on the west of the San Lorenzo are also laid down.

But the tract, as located under the survey the court is asked to adopt, would lie almost entirely to the west of the Zayante, and would be divided nearly in the middle by the San Lorenzo.

Had such been the situation of the land solicited, it is natural
141 to suppose it would have been called *San Lorenzo*, and not "Zayante." Such a location would, moreover, exclude the principal portion, not only of the tract delineated on the diseno, but of the buildings and improvements represented upon it, especially those at the southeastern corner, and the molino or mill on the N. east. Again, the rancho as held by the 1st grantee, Buelna, is stated by the latter to have been bounded on the west by the San Lorenzo, although when the juridical possession was given to Majors, the subsequent grantee, this boundary was not observed, yet the distance to which it was to extend beyond the San Lorenzo, was accurately determined, and a tree was marked at the western end of the latitudinal line; the rancho remaining as before, principally located on the east of that stream. Again, it is unreasonable to suppose that in 1841 the grantee would have desired more than $\frac{1}{3}$ of a rancho, which was only one league long by $\frac{1}{2}$ a league, more or less, broad, to be located on the sides of a densely

timbered and almost valueless sierra, while valley lands on either side of a creek from which the rancho derived its name, and where a great part of his improvements were situated, was excluded. On the whole, it appears to me that the survey should be made so as to embrace a tract of the average length of 5,000 varas, and the average width of 3,000 varas.

That the eastern line should be run from the tree near the molino identified by the witnesses to the pine tree mentioned in the acts of possession as a boundary mark, at the end of the west and east line, and so far beyond said tree as is necessary to make the length of said line 5,000
142 varas; that the southern line should be run so as to pass through the point mentioned by Perez and Majors and identified by Wright as the point of beginning of the longitudinal line; that the western line should pass through the point mentioned in the act of possession as the place where the monte begins, and identified by Perez and Wright; and that thence it should be run in a general northerly direction, and so as to include the potreros on the west side of the San Lorenzo, provided that by so doing the average width of the tract included between such western boundary and the eastern boundary hereinbefore described shall not be greater than 3,000 varas.

Endorsed: Filed October 31, 1859.

W. H. CHEVERS, *Clerk.*

Order setting aside survey and directing a resurvey.

143 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Thursday, the tenth day of November, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* } No. 342; L. C. 260. "Zayante."

This cause came on to be heard upon exceptions to the survey, and was argued by counsel for the respective parties, and due deliberation had in the premises. Wherefore it is now ordered, adjudged, and decreed that the survey of the land claimed in this case, made by the U. S. surveyor general for California, under the final decree heretofore entered herein, the field-notes of which survey were approved by said surveyor general, on the 9th day of July, 1859, and a certified copy of the plate of the same, which was filed in this court, pursuant to its order, on the said 9th day of July, 1859, be, and the same is hereby, declared erroneous, and not in conformity with the said decree, and that the same be, and hereby is, annulled and set aside.

And it is further ordered, adjudged, and decreed that the said U. S. surveyor general for California cause a resurvey of the said land to be made
144 in conformity with the true intent and meaning of the said final decree, to wit: the eastern line to commence at the tree near the molino identified by the witnesses, and thence to be run southerly to the pine tree mentioned in the act of possession, as the boundary marks of the eastern end of the latitudinal line of judicial measurement, or so far beyond said tree as will make the length of said eastern line five thousand varas; thence the southern line to be run so as to pass through the point stated by Perez, and identified by Wright, as the point of beginning of the longitudinal line of juridical measurement, said southern line to be in length equal to the said latitudinal line of juridical measurement; thence from the western end of such southern line to the point where the monte begins, being the western

end of the latitudinal line of juridical measurement as identified by the witnesses, and from said last-mentioned point to a point from whence the northern line can be run equal in extent and parallel in course with the southern line to the place of beginning; the said western line to be run so as to include the potreros on the west side of the San Lorenzo river, provided that the tract so measured shall not include between its eastern and western lines a greater average width than three thousand varas. Reference for greater certainty to be had to the deposition of Cornelio Peres and T. W. Wright, taken in this court and filed in the case.

And it is further ordered that a certified copy of this order be served
145 upon the said U. S. surveyor general for California, for his information and guidance.

OGDEN HOFFMAN, *District Judge.*

U. S. MARSHAL'S OFFICE,
San Francisco, Nov. 10th, 1859.

I have this day made personal service by copy of this order on J. M. Mandeville, the U. S. surveyor general for California.

P. L. SOLOMONS, *U. S. Marshal.*

Endorsed: Filed November 10th, 1859.

W. H. CHEVERS, *Clerk.*

Petition for rehearing, grant, translation, and affidv't Jas. Wilson.

No. 260.

In the district court of the northern district of California.

THE UNITED STATES *vs.* ISAAC GRAHAM, claimant of the Zayante Rancho. } Petition for rehearing, to open decree, &c.

The above-named Isaac Graham respectfully shows that on the day of June, 1852, he filed before the late board of commissioners for set-
146 tling private land claims in the State of California, his petition for the confirmation of the rancho above named; that not being acquainted with many persons in the city of San Francisco, he applied to John Parrott, whom he had known for several years before the date mentioned, and said Parrott drew the petition for him; that at the time of applying to said Parrott he exhibited to him all his title papers relating to said ranch, here now on file in the office of surveyor general, and also there, a traced copy of which is hereunto annexed, the originals of which he has exhibited for examination to the acting district attorney of the United States, and has ready to produce at any time when directed so to do by this honorable court.

That when he exhibited said papers said Parrott told him he thought it unnecessary for him to produce before the land commission any other than those on file.

He then, finding the services of an attorney indispensable, applied to the Hon. James Wilson, formerly a member of said board, as his legal adviser, who also informed him he thought it was unnecessary to produce any other papers than those on file.

That knowing his claim to the land he now asks for was honest and just, he relied upon the equity and justice of the United States to give him what the Mexican government had granted to him.

147 The said Isaac Graham further shows that he was induced to make the application referred to in the papers now submitted, because it had been suggested by some person, whose opinion he respected, that the juridical possession had been imperfectly given, and that his papers were not as clear and intelligible as they should be; and in order to prevent any mistake or dispute, he made the said application for the land containing the timber, and now rejected from the survey. Upon examination of these documents it will appear that the densely-timbered land "referred to in the opinion of this honorable court was not regarded as being valueless" by the claimant when it was granted to him.

Claimant further shows that after the report was made by the public officer named in these documents, he was instructed by them that said land was included in the title of J. L. Majors, and was recognized as being so included by the Mexican authorities, and that, acting upon such information, this claimant proceeded a year or two afterwards, in 1846 or 1847, as nearly as he can remember, and built mill, which is still standing on the San Lorenzo river, (marked on this map as the Rio de Santa Cruz,) and continued to use said timber at his discretion from the hillside shown in his diseno, and which has been rejected from survey by the United States surveyor general, and also built a house on said land.

Claimant further shows that a few weeks since his attention was called by his counsel, Mr. Edward Stanly, to the opinion of this honorable
148 court, and claimant was asked by his counsel whether this timber was valueless in 1841, when claimant informed him that he had petitioned for this land because he wanted the timber, and that his papers would show it; that he had asked for the land on the hillside west of the potreros mentioned in the survey, and that he had mills on said ranch in the year 1841 for sawing lumber, that his counsel, Mr. Stanly, after examining, informed him he could not find all the papers spoken of, when this claimant told him what is hereinbefore stated, of his producing the papers before Mr. Wilson, and that claimant believed he still had the papers. Upon the instruction of his counsel he went home to Santa Cruz County, and a short time since brought the originals of the annexed traced copies to his counsel.

The said claimant further represents that he is an uneducated man, living since the year 1818 in the wilderness among Indians until 1834, when he came to California; that he was well acquainted with this country, and thought the timber must be valuable, and at an early day purchased this ranch from J. L. Majors, before mentioned; that he has always acted with good faith to the Mexican government, and with fidelity to his own country; that since he purchased this land called the Zayante, from J. L. Majors, he has always claimed the timbered land now rejected in the survey; that he has paid onerous taxes, and because of want of confirmation and
149 a proper survey, he has been deprived of all benefits from the land.

He prays the decree may be opened, and that he may be allowed to offer this testimony, and that the survey made excluding this land may be set aside and such a survey made as will give him all the land, the title to which was acknowledged by the Mexican government as being in him, and for such other and further relief as to this honorable court may seem equitable and proper.

And, as in duty bound, he will ever pray.

STANLY & KING,
Att'ys for Claimant.

UNITED STATES OF AMERICA,
Nor. Dist. California, ss:

Isaac Graham, the within-named petitioner, being duly sworn, deposes

and says that he has read the foregoing petition, and that the facts therein set forth are true, to the best of his knowledge and belief.

ISAAC GRAHAM.

Sworn to and subscribed this 27th March, 1860, before me.

W. H. CHEVERS, *U. S. Comm'r.*

150 Sello tercero. Un peso.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los anos de mil ochocientos cuarenta y tres.

MICHELTORENA.
MANUEL CASTANARES.

MONTEREY, *Sep're* 14 *de* 1843.

Sirvase informar el S. prefecto del 1er distrito.
[SELLO.] MICHELTA.

Ex'mo Sor. Gobernador:

Isaac Graham, natural de los Estados Unidos de Norte America y residente en este Territorio hace como catorce anos, ante V. E. se presento y digo: Que tenia un establecimiento de aserraduria por maquirenia en el rancho llamado Cyanthe, hay un poca de tierra valdio q'e contiene madera y ansiosa a poner otro molina en d'ho terreno, segun consta el adjunto diseno. Suplico a V. E. q'e me concede d'ho terreno. P. T. N. V. E. suplicao humildemente q'e me conceda este mi peticion, siendo necesario, por lo cual recibire merced y gracia.

ISAAC GRAHAM.

MONTEREY, 14 de 1843.

MONTEREY, 14 *de S'bre de* 1843.

151 Informe el Sor juez de la Villa de Branciforte si el terreno que se solicita esta baldio, o si pertenece a particular o pueblo, con todo lo demas que crea en justicia.

ESTRADA.

SANTA CRUZ, 16 *de Septiembre de* 1843.

Informa el juez de Vranciforte que el lugar que solicita D'n Isac Gram hes mui ynmedito a la rancho de hel no habido ningun solicitante sobre el dicho lugar. Si pertenece a la ex-mission de Sta Cruz. Les cuanto tengo que yn-formar.

RAFAEL CASTRO.

Informe el tor encargado del establecimiento de S'ta Cruz, si el terreno que se pretende esta baldio, con todo lo demas que crea en justicia.

ESTRADA.

Sr. Prefecto:

El terreno q'e solicita en esta ocupado pr. el cindadano Jose Majors segun q'e ha manifestado su titulo y decino del gobierno esto puedo informar sobre el particular.

St'a Cruz, 1 de Octobre de 1843.

JOSE BOLCOFF.

(Here follows map, page 152.)

153 *Translation.*

Third seal. One dollar.

Provisionally qualified for the maritime custom-house of the port of Monterey, in the department of the Californias, for the year one thousand eight hundred and fifty-three.

To the most excellent governor:

Isaac Graham, a native of the United States of North America and resident in this Territory for the last fourteen years, before your excellency presents himself and says that he has an establishment for sawing by machinery in the rancho called Zyante. There is a little vacant land containing timber, and, desirous of putting up another mill on the said land, as is shown by the accompanying diseno, I request your excellency to grant me said land. Therefore I humbly request that you grant me this my petition, being necessary, by which I shall receive favor and grace.

Monterey, 14th Sept., 1843.

MONTEREY, *September* 14*th*, 1843.

Let the senor prefect of the 1st district please report.

MICHELT'A.

MONTEREY, *September* 14*th*, 1843.

Let the judge of the town of Brancifute report whether the land petitioned for is vacant, or if it belongs to any private individual or pueblo, with everything else he believes just.

ESTRADA.

154 SANTA CRUZ, 16*th September*, 1843.

The judge of Brancifute reports that the place solicited by Isaac Graham is very near to his rancho, there being no petition in relation to said place. It belongs to the ex-mission of Santa Cruz. This is all I have to report.

RAFAEL CASTRO.

MONTEREY, 28*th Sept.*, 1843.

Let the person in charge of the establishment of Santa Cruz report if the land which is solicited is vacant, with whatever else he may believe just.

ESTRADA.

To the senor prefect:

The land petitioned for is occupied by the citizen Jose Majors, as has been shown to me by his map and title from the government. This is what I can report in the matter.

Santa Cruz, 1st October, 1843.

JOSE BOLCOFF.

155 In the United States district court for the northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM, claimant of Zayante Rancho. } ss. No. 260.

James Wilson, being duly sworn, deposes and says he has read the affi-

davit and petition of said Isaac Graham, of date 27th March, 1860, and hereunto annexed, and that the facts therein stated by said Graham, of his exhibiting the said papers to this affiant, and his advice therein, are truly stated; that this affiant has examined the original, of which a traced copy is annexed to said Graham's affidavit, and remembers the paper as being the same which was submitted to him by said Graham, as stated by him.

JAMES WILSON.

Sworn to and subscribed before me this 28th March, 1860.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed March 28th, 1860.

W. H. CHEVERS, *Clerk.*

156 *Monition.*

UNITED STATES OF AMERICA,
Northern District of California:

[SEAL.] The President of the United States of America to the marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed, in case No. 342, to Isaac Graham *et al.*, known as Sayante, and situated in the county of Santa Cruz, in said district, now, therefore, you are commanded, in the name of the President of the United States of America, to give due notice to all parties having, or claiming to have, an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 24th day of October, A. D. 1860, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 17th day of September, A. D. 1860.

W. H. CHEVERS, *Clerk.*

157 Endorsed: The within monition was received by me on Monday, the 17th day of September, 1860, and in obedience thereto I have given due notice, as therein commanded, by causing the publication of said notice for 4 consecutive Wednesdays, in the San Francisco Herald, commencing on the 19th day of September, 1860, and for 4 consecutive Saturdays in the Equal Rights Expositor, a paper published nearest the land, commencing on the 21st day of September, 1860.

Dated San Francisco, October 24th, 1860.

P. L. SOLOMON, *U. S. Marshal.*

Filed October 24th, 1860.

W. H. CHEVERS, *Clerk.*

Order on return of monition.

At a stated term of the district court of the United States for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 24th day of October, in the year of our Lord one thousand eight hundred and sixty.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* JAMES GRAHAM *et al.* } In land cases, district court, No. 342; Land Com. No.

158 And now, at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded, on motion of —— ——, attorney for —— ——, proclamation was made that all parties having, or claiming to have, an interest in the survey and location of the land, finally confirmed in the above-entitled cause, appear and intervene for the protection of such interest. The U. S. attorney and John B. Williams appeared for the United States, and E. Stanley for the claimants, no other party appearing. Whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed October 24th, 1860.

W. H. CHEVERS, *Clerk.*

159 *Dep. of L. L. Logan.*

District court of the United States, northern district of California.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* }

SAN FRANCISCO, *November 23d*, 1860.

On this day, before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Loron Longley Logan, a witness produced on behalf of the claimants in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present: Mr. Stanly, counsel for claimants, and Calhoun Benham, esq., U. S. attorney.

Question 1st by counsel for the claimants. What is your name, age, and place of residence?

Ans. Loron Longley Logan; am about 39 years of age, and reside in Santa Cruz County, Cal.

Ques. 2. Look at the paper now shown you, marked "W. H. C. No. 1, case 342," and say whether you witnessed the said papers signed by Isaac Graham and James Mathers.

160 Ans. I did. I signed it as one of the subscribing witnesses, Loron Longley, the rest of my name being accidentally omitted. It is a contract between Isaac Graham and James Mathers.

(Counsel for claimants now offers said paper in evidence, which document is objected to by the United States attorney, as incompetent to contradict the calls of the grant and the record of juridical possession.)

3rd. In the 13th line on first page of said document the word "*creek*" is mentioned. State by what name or names said creek or stream was known.

Ans. I think it was called San Lorenzo, and sometimes Santa Cruz River.

Ques. 4. Please look at a traced copy of an original paper attached to the petition for rehearing, filed March 28th, 1860, and state whether you are acquainted with the tract of land there laid down.

Ans. Yes, sir. I am somewhat acquainted with it, and have been since February or March, 1847. I was employed by Mr. Mathers at that time, who is a party to the contract aforementioned. He employed me to get out timber, and to do general work. I cut logs above Mr. Ashley's house, which is above the third potrero, opposite to the place marked "Lomas de Palo," "Colorado."

Ques. 5. Did you or not cut timber from the mountain side for Mr. Mathers in 1847?

161 Ans. I did.

Ques. 6. Look at the paper now shown you, marked "W. H. C. No. 2, case 342," and say if you are acquainted with the handwriting of Mr. Blackburn; and if yea, state if said document is in his own proper handwriting.

(U. S. attorney objects to said document as irrelevant.)

Ans. I am acquainted with the handwriting, and believe said document is in his handwriting.

Ques. 7th. State, if you know, how far on the mountain side said Graham claimed to own in 1847.

(Objected to by U. S. as not being competent to prove the calls of the grant by parole testimony.)

Ans. He claimed to own to the top of the mountains, and nobody else had any occupation or possession of the land mentioned in the document first referred to in this deposition.

Ques. 8. Look at the certified copy plat of the official survey, filed July 7th, 1859, and point out Ashley's house.

(Witness points to the place marked "Ashley's house.")

Ques. 9. Point out on said map where you cut timber.

162 Ans. I cut timber west of the line of survey and west of Ashley's house in 1847.

Cross-examined by U. S. attorney.

Ques. 10. In your answer to the 7th question you state that Graham claimed to own to the top of the mountain. What sort of a claim did he have?

Ans. I don't know. I heard under a Spanish grant.

Ques. 11. In the same answer you state there were none others who had any occupation there. Are you sure there was no dispute about the land west of the San Lorenzo while you lived there?

Ans. Not until 1853 or 1854 by some settlers, Mr. Graves and others.

Ques. 12. Did you never hear Mathers himself question Graham's ownership?

(Objected to.)

Answer. I heard Mathers say in 1848 that he didn't think Graham owned to the mountains. He and Graham had some difficulty about that time.

Ques. 13. Did you not hear Mathers question Graham's ownership to all the land west from the San Lorenzo, as shown on the traced copy of the diseno filed in the petition for rehearing?

163 (Objected to by claimant as irrelevant, &c.)

Ans. At the time he had the difficulty he did, including the place where the mill was situated mentioned in the lease.

Ques. 14. What was the nature of that difficulty?

(Objected to as before.)

Ans. It was something about cattle; that is, it commenced that way.

Ques. 15. Since the building of the mill did not Ramon Buelna point out to you the western line of the ranch? And if so, where was it located?

(Objected to by claimant.)

Ans. He did. He pointed out a redwood tree on the east side of the river, and below the mill. This was in the winter of 1848. Buelna had been drinking some when he told me.

Ques. 16. Did not J. L. Majors make to you the same statement? And if so, when?

(Objected to by claimant.)

Ans. He said the Buelna grant did not go over the San Lorenzo creek, but Mr. Graham's grant did.

164 Ques. 17. From these conversations, from the declaration of Mathers, as you have stated, and from other matters, does it not seem plain to you now that Graham's claim to the mountain *was* disputed?

(Objected to by claimant.)

Ans. It was disputed by Mathers, who refused to pay the rent in lumber, provided by the terms of the lease, and they had a lawsuit about it, which was settled by Blackburn, the alcalde referred to in Exhibit No. 2 to this deposition. This dispute between Graham and Mathers is the same I have before referred to.

L. LONGLEY LOGAN.

Sworn to and subscribed this 23d November, 1860, before me.

W. H. CHEVERS, *U. S. Comm'r.*

Exhibit W. H. C. No. 1, annexed to dep. of L. L. Logan.

"W. H. C. No. 1, case 342."

Agreement made and entered into by and between Isaac Graham, of Santa Cruz, in the Territory of California, of the one part, and James Mathers, of Santa Clara and Territory aforesaid, of the other part, as follows, to wit: the said Mathers agrees with the said Graham to build a saw-mill on the main creek, running through the tract of land owned by the said Graham and William Ware, on which they now reside, and to have the same in operation on or before the first day August next, the said mill to be substantially built and finished in a workmanlike manner, with two saws to run at the same time, and also to build a good and substantial dam across the creek in connection with said mill. The said Mathers further agrees to run said mill six years from and after the time the same shall be put in operation, and keep the mill and dam in repair at his own expense, and to deliver to the said Graham, his heirs or assigns, at the said mill, six hundred feet of good merchantable lumber per day; that is to say, one hundred eighty-seven thousand and eight hundred feet per annum for six years as *as* aforesaid.

The said Mathers also agrees at the expiration of six years, as aforesaid, to give the said Graham, his heirs and assigns, quiet and peaceable possession of said mill with all that appertains thereunto, and to leave the same in good repair.

And the said Graham on his own part and behalf, and also on the part and behalf of the said William Ware, agrees to pay the said Mathers,

166 his heirs or assigns, the sum of two thousand dollars in lumber, to be retained by the said Mathers out of the first that shall be sawed and due to the said Graham, as a full compensation for building said mill, the lumber to be rated at thirty-five dollars per thousand feet.

The said Graham further agrees, as aforesaid, to give the said Mathers, his heirs and assigns, full liberty to enter on any part of the tract of land aforesaid, and to cut and haul timber for the purpose of building said mill and dam, and for any other improvements that may necessary to make in connection with the mill, and also to use all timber that may requisite to keep said mill in constant operation.

The said Graham also agrees to let the said Mathers have the exclusive privilege of building and running one or mills in addition to the above, and on the same condition and for the same length of time as is above stipulated. He also agrees to let the said Mathers have the occupancy of a reasonable quantity of pasture land, convenient to said mill, for the purpose of keeping the animals upon that are necessarily employed in conducting the business connected with said mill, and the privilege of fencing the same if he thinks proper to do so. The said Mathers agrees to give the said Graham notice in writing on or before the first day of August next, whether he will or will not build another mill or mills as above alluded to, and said notice
167 shall be deemed and taken as a part of this contract.

It is mutually agreed by and between the parties to this contract that should any serious accidents hapen to said mill, so as to prevent its running for any considerable length of time, that the payment of the rent accruing to the said Graham shall be suspended until the said Mathers shall have a reasonable time to repair the same.

It is further agreed by and between the parties aforesaid that should other persons than those who may be connected with the operations of the mill or mills, to be built in pursuance to the foregoing contract, be engaged in building or sawing on the same tract of land on which said mill is to be built, that they are to have equal privileges in cutting timber with the party to this contract.

In witness whereof, the parties aforesaid have hereunto subscribed their names this 17th day February, A. D. 1847.

ISAAC GRAHAM.
JAMES MATHERS.

In presence of—
DAVID J. BENNETT.
LORON LONGLEY.
ELI BUNDELL.

(Duplicate.)

In explanation of the foregoing contract I hereby declare that the rent becomes due daily.

JAMES MATHERS.

168 *Exhibit "W. H C. No. 2," annexed to dep. of L. L. Logan.*

"W. H. C. No. 2, case 342."

Know all men by these presents that I, Carolon Mathers, son of James Mathers, and a lawful partner of said James Mathers, in the saw-mill built by James Mathers an son, the said saw-mill standing upon the farm owned and occupied by Isaac Graham, I, Carolon Mathers, by virtue of authority and power vested in me by James Mathers, my true and lawful partner, to dispose of said mill in such a manner as I may deem most advantageous:

I therefore do, by these presents, grant, give, sell, and convey to Isaac Graham all the right and title of James Mathers and son, together with the saw-mill and all the apparatus belonging thereunto, the blacksmith's shop, dwelling-house, and all other out-houses and buildings standing on the

premises and heretofore occupied by James Mathers and son to be included in the same; also to complete the contract of cutting 2,000 logs, as agreed upon between William Thornton and James Mathers and son, in consideration of the sum of 87,603 feet of lumber being paid down by the said Isaac Graham, the receipt whereof is hereby acknowledged.

In witness whereof, I do hereunto set my hand and seal this 23d day of June, in the year of our Lord one thousand eight hundred and forty-eight.

CAROLON MATHERS. [SEAL.]

ALBERT T. MORRIS.

169 The within acknowledged before me this 23d day of June, A. D. 1848.

WM. BLACKBURN,
Alcalde of Santa Cruz.

Endorsed: Filed Dec. 8th, 1860.

W. H. CHEVERS, *Clerk.*

Dep. of R. E. Hopkins.

District court of the United States, northern district of California.

THE UNITED STATES }
vs.
ISAAC GRAHAM *et al.* }

SAN FRANCISCO, *Dec'r 8th*, 1860.

On this day, before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came R. C. Hopkins, a witness produced in behalf of the claimant in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

[Deposition of this witness taken by consent.]

Present: Edward Stanly, counsel for claimants, and Calhoun Benham, U. S. att'y, for the U. S.

170 Question 1st by counsel for claimant. What is your name, age, place of residence, and occupation?

Ans. Rufus C. Hopkins; am of lawful age; reside in San Francisco, and have charge of the Spanish and Mexican archives of the former government, now in the office of the U. S. surveyor general for California.

Ques. 2. Look at the original paper now shown you, marked Exhibit No. 1, and attached to this deposition, and say whether, in your opinion, the signatures of Micheltorena, Estrada, Rafael Castro, and Jose Bolcoff are genuine.

Ans. The signatures of Micheltorena, Estrada, and Jose Bolcoff I believe to be genuine; that of Rafael Castro I am not acquainted with.

Ques. 3. Have you examined the seal and paper of this document? And if so, please state whether you believe the seal to be the original and true seal used by the Mexican authorities of the date of the paper.

Ans. The seal is the genuine seal of the aduana maritima de Monterey, and the paper appears to be the genuine habilitated paper for the year 1843.

171 Ques. 4. Do you know in whose handwriting the petition of the first page of said document and the writing on the map attached to said document is?

Ans. In the handwriting of one George Allen, whose handwriting appears often in the archives.

(It is admitted by the counsel for the respective parties that the said George Allen died in July, 1847.)

Ques. 5. How long have you been acquainted with the archives, and what are your means of judging of the handwriting of the parties above referred to?

Ans. I have been in charge of the archives for the office of the U. S. surveyor general for the last five years. I have been constantly in the habit of critically examining and comparing the signatures found in said archives, and have often examined the signatures of the gentlemen mentioned in this deposition, as found in the archives. These are the means I have of determining whether or not a signature be genuine.

Cross-examination waived.

Deposition closed. R. C. HOPKINS.

Sworn to and subscribed this 8th December, A. D. 1860, before me.

W. S. CHEVERS, *U. S. Comm'r.*

172 The translation of the exhibit referred to in the foregoing deposition was filed in court on the 28th March, 1860, and is annexed to the petition for a rehearing of this cause.

Endorsed: Filed Dec. 8th, 1860.

W. H. CHEVERS, *Clerk.*

Exhibit No. 1 *to dep. of R. C. Hopkins, taken and filed on Dec'r* 8, 1860.

173 Sello tercero. Un peso.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamente de los Californias, para el ano de mil ochocientos cuarenta y tres.

MICHELTORENA.
MANUEL CASTANARES.

MONTEREY, *Sep'be* 14 *de* 1843.

Sirvase informar el S. prefecto del 1er distrito.

[SEAL] MICHEL'A.

Exmo Sor Gobernador:

Isaac Graham, natural de los Estados Unidos de Norte America, y residente en este Territorio, hace como catorce anos, ante V. E. se presento y digo: Que tenia un establecimiento de aserraduria por maquerenia en el rancho llamado Cyanthe, hay un poco de tierra valdio q'l contiene madera y ansioso a poner otro molin en d'ho terreno segun consta el adjunto diseno. Suplica a V. E. q'e me concede d'ho terreno.

P. T. A. V. E. suplica humildemente q'l me concede este mi peticion, siendo necesario, por lo cual recibire merced y gracia

Monterey, 14 de Setiembre de 1843.

ISAAC GRAHAM.

MONTEREY, 14 *de S'bre de* 1843.

Informe el Sor juez. de la villa de Branciforte si el terreno
174–175–176 que se solicita esta valdio o si pertenece a particular o pueblo, con todo lo demas que crea en justicia.

ESTRADA.

MONTEREY, 28 *de S'bre de* 1843.

Informe el Sor encargado del establecimiento de S'ta Cruz, si el terreno que se pretende esta baldio, con todo lo demas que crea en justicia.

ESTRADA.

S'TA CRUZ, 16 *de Septiembre de* 1843.

Informe el juez de Branciforte que el lugar que solicita D'n Isac Gram, hes mui inmediate a su rancho de hel no habido ningun solisitante sobre el dicho lugar, si pertence a la ex-mision de S'ta Cruz, hes cuanto tengo que informar.

RAFAEL CASTRO.

S'r Prefecto:

El terreno q'e solicita en esta ocupado p'r el siudadano Jose Majors, segun q'e ha manifestado su titulo y decino del gobierno esto puedo informar sobre el particular.

S'ta Cruz, 1o de Octubre de 1843.

JOSE BOLCOFF.

(Here follows map, page 175.)

177 District court of the United States, northern district of California.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.*

Dep. of Jose Bolcoff.

SAN FRANCISCO, *Jan'y 4th*, 1861.

On this day, before me, William H. Chevers, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Jose Bolcoff, a witness produced on behalf of the claimant in case No. 342, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 260 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by a sworn interpreter, to wit, Wm. F. Nye.

Present: Edward Stanley, for claimant; U. S. att'y for U S.

Question 1st by counsel for the claimant. What is your name, age, residence, and occupation?

Ans. Jose Bolcoff; 67 years; Parjaro, Santa Cruz Co.; laborer.

Ques. 2. Look at the paper now shown you, marked Exhibit No. 1, to deposition of R. C. Hopkins, taken and filed on 8th Dec'r, 1860, and
178 say if the writing on the 2d page, to which your name is affixed, was placed there by yourself.

Ans. I recognize the writing; it is mine; so are the signature and the rubric. The writing was made and the signature and rubric affixed at the time expressed in the document, 1st October, 1843.

Ques. 3. What office did you hold at that time?

Ans. I was administrator of the mission of Santa Cruz.

Ques. 4. Was this map, attached to these papers, brought before you at the same time when you affixed your signature to this writing?

Ans. It was presented to me *to me* at the same time I signed the accompanying informe.

Ques. 5. Did J. L. Majors bring before you his title-papers to the Sayante

Ranch at this time, and did said Majors claim the land on the hillside, as marked in this map belonging to him?

(Objected to by U. S. att'y, as leading.)

Ans. He did present his title-papers at the same time. I am old, and do not recollect exactly whether he claimed it at the time.

179 Ques. 6. Did you have a trial between Majors and Graham at that time relative to this land? And if so, what did you decide?

Ans. I do not recollect.

Ques. 7. What did you do when this matter was brought before you by Graham?

(Objected to by U. S. att'y, because the paper itself shows what Bolcoff did.)

Ans. I ordered Major to present his title-papers. I reported that the land was occupied by Majors.

Ques. 8. In your deposition, taken in this case, you say you ran 4 lines in giving juridical possession to Majors. Were you correctly understood in this?

Ans. There were but two lines; the interpretation in the case was not correct. Buelna had possession before Majors; then there were four lines run. I gave possession also to a man named Moss.

Ques. 9. Had you not frequently, under the Mexican government, given juridical possession to different persons of other tracts of land, and was this done with as much regularity as in other cases?

(Objected to by U. S. att'y, as the witness is not competent to construe his own judicial action.)

180 Ans. I gave possession of many tracts of land. This was done with as much regularity as the others.

Ques. 10. In giving juridical possession, under the Mexican government, did you survey all the lines, as the U. S. surveyors now do?

(Objected to by U. S. att'y, because it is not shown that the witness knows how U. S. surveys are made, and as leading.)

Ans. I did in the open plain; in the mountainous ground I did not.

Ques. 11. Did Isaac Graham have a mill upon this river, called Rio de Santa Cruz, upon this ranch on October 1st, 1843.

Ans. I do not recollect.

Ques. 12. Was the river called Rio de Santa Cruz on this map the same as that called San Lorenzo?

Ans. The San Lorenzo and Santa Cruz run into each other.

Cross-ex'd by U. S. att'y.

Ques. 13. Look at Exhibit No. 1, before referred to, and read the report upon it signed by you.

181 "SENOR PREFECT: The land petitioned for is occupied by the citizen Jose Majors, as has been manifested to me by his title-papers and map. On the part of this government I am authorized to report respecting the particular matter.

"JOSE BOLCOFF.

"Santa Cruz, 1st Oct., 1843."

(Interpreter says the witness read the foregoing correctly.)

Ques. 14. Did you mean by that report that the measurement which you had previously made when you gave juridical possession to Majors included the lands on the diseno in Exhibit No. 1?

Ans. I do not recollect. The title-papers of Majors will show.

Ques. 15. You have stated that when you gave juridical possession to Majors you measured but two lines. Can you recollect at what point you commenced to measure from? And if so, state it.

Ans. I do not recollect.

Ques. 16. Can you recollect the direction of the two lines measured by you—whether north and south, east and west, or otherwise?

Ans. I do not recollect. It may have been from south to north and from east to west.

182 Ques. 17. I will now read to you the act of juridical possession as it appears in the transcript, on page 54, signed by you and by Francisco Rodriguez, Cornelio Perez, and Ramon Rodriguez, by assisting witnesses, for the purpose of refreshing your recollection. After hearing it read, please answer question No. 14.

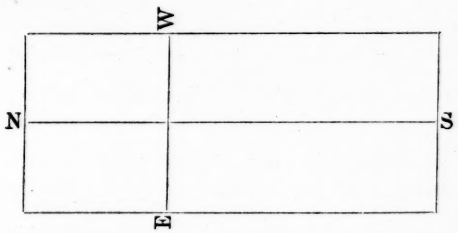
(Objected to by Mr. Stanley, because the original is not shown witness.)

Ans. I do not recollect.

Ques. 18. You said there were but two lines. The act of juridical possession states that the measurement was from south to north 5,000 varas, and from west to east 3,000 varas. Were the lines that you measured somewhat in the form of a cross?

Ans. Yes, perhaps.

Ques. 19. And the land included within that measurement would be shown as indicated by this diagram?



Ans. It would be.

183 Ques. 20. Was not that form of measurement one in common use under the Mexican government when juridical possession was given, if the nature of the land prevented the exterior boundaries being measured? And if so, was not that the reason why this measurement was made by measuring a line from south to north and from west to east, instead of measuring the four sides?

Ans. Where the country was mountainous it was not customary to measure the land, as the owners would not pay for it.

Ques. 21. In the act of juridical possession it is stated, "including the potreros on the other side of the San Lorenzo River." If you recollect that expression in your act of juridical possession, can you state now whether you meant to include such portion of the potreros as would be found within the measurement you made?

Ans. I do not recollect. The title-papers will explain.

Deposition closed.

JOSE BOLCOFF.

Subscribed and sworn to before me this 4th day of January, A. D. 1860.

W. H. CHEVERS, *U. S. Comm'r.*

Endorsed: Filed January 4, 1861.

W. H. CHEVERS, *Clerk.*

184 *Notice to close proofs.*

In the district court of the United States for the northern district of California.

THE UNITED STATES vs. ISAAC GRAHAM. } No. 342.

To Calhoun Benham, esq., district att'y of the United States :

SIR : Please take notice that on Monday next, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, a motion will be made to the court to fix a time within which the proofs in this case shall be closed, and the cause heard.

January 9th, 1861.

EDW. STANLEY,
Counsel for Claimant.

Rec'd copy above notice.

JNO. B. WILLIAMS,
Att'y in aid of U. S. Att'y.

Endorsed : Filed January 14th, 1861.

W. H. CHEVERS, *Clerk.*

185 *Order closing proofs and setting cause for hearing.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 14th day of January, in the year of our Lord one thousand eight hundred and sixty-one.

Present : The Honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. ISAAC GRAHAM *et al.* } No. 342.

And now, at this day, on motion of the attorney for claimants, the U. S' attorney consenting thereto, it is ordered that the proofs in said cause be considered closed, with leave to either party to file such archive evidence as they may deem proper at or before the hearing of the cause. And it is further ordered, on like application, that the 21st day of January, 1861, be set for the hearing of said cause.

Endorsed : Filed January 14th, 1861.

W. H. CHEVERS, *Clerk.*

Exhibit U. S. No. 1.

186 1859.

Espediente relative to the petition of Don Francisco Mos, for the land known by the name of Zayante.

Senor prefect of the 1st district :

I, Francisco Mos, a naturalized citizen of the Mexican Republic, married to a woman of the country, and residing at "La Natividad," appear before your worship in due form of law, and state as follows : That being the owner of a sufficient number of cattle and horses, I am compelled, for the maintenance of my family, to seek for a tract of land upon which to support my

stock; for which reason, and knowing that Don Joaquin Buelna cannot improve the land possessed by him in the demarcation of the Villa de Branciforte, on account of his advanced age and want of stock, I intend, in a friendly way, and with his consent, to denounce the said land as vacant; and the said Buelna has informed me that, after this step had been taken, he freely consented that his land should be denounced by me as vacant, since he is unable to improve it, on account of his advanced age, and since, on account of his life being greatly endangered by the incursions of bar-
187 barous Indians, he has already abandoned the place, with his family, and removed his residence to the rancho of San Pedro; that, desiring to make some compensation to the said Joaquin Buelna, for the small improvements that he has made upon the land, I offered him an indemnity of eight hundred dollars, which he accepted and delivered to me, before the justice of the peace of the said Villa, the title which he had received from the government, and the documents of possession, in order that they might be valid in my favor.

Wherefore, denouncing as vacant, in due form, the land of Don Joaquin Buelna, known by the name of Zayante, the map of which is hereto annexed, I most respectfully beg that your worship will take the necessary steps in relation to this my petition, in order that the ownership of the land which I solicit may be granted to me by the government, and admitting this on common paper, in default of the necessary stamp.

I swear what is necessary, &c.

San Juan de Castro, Sept. 1st, 1839.

FRANCISCO MOS.

Marginal decree.

SAN JUAN DE CASTRO, *Sept.* 2, 1839.

The petition is admitted, and let the same be transmitted Don Juan Buelna, in order that, within the term of eight days, he may state what he con-
188 siders to be just in relation thereto.

CASTRO.

SENOR PREFECT: Having examined the representation of Don Francisco Mos, which I received from your worship, by which the petitioner denounces as vacant the land called "Zayante," the ownership of which I acquired from the government by just title, I have to state: 1st, that his advanced age does not permit of his improving the said land; 2d, that I have no cattle to locate thereupon; 3d, that I have abandoned it on account of the lives of my family and myself being endangered at a place uninhabited, and threatened by the savages; 4th, that the sum of eight hundred dollars, which the said Mos has bound himself to pay me, is more than sufficient to indemnify me for my expenses; 5th, that it is true that of my own free and spontaneous will, I have delivered to said petitioner the title and documents of possession, relative to my property in said land, abandoning all rights which I had or might have, by virtue thereof.

San Juan de Castro, Sept. 6th, 1839.

JOSE JOAQUIN BUELNA.

SAN JUAN DE CASTRO, *Sept. 7th*, 1839.

Let this pass to the justice of the peace of the capital of the dis-
189 trict, who shall report if the party, Don Francisco Mos, possesses the legal qualifications required, and if he has stock to place upon the land that he solicits.

CASTRO.

SENOR PREFECT: In compliance with the preceding superior decree, I have the honor to report to your worship, that the petitioner in this case, Don Francisco Mos, is possessed of the qualifications required by law, being a naturalized citizen of the republic, married to a Mexican woman, and has sufficient stock to place upon the land he solicits.

San Juan de Castro, Sept. 8th, 1839.

JUAN MIG'L AUZAR.

SAN JUAN DE CASTRO, *Sept. 9th*, 1839.

Let this pass to the most excellent governor of the department, with the corresponding report.

CASTRO.

MOST EXCELLENT SENOR: The prefecture sets no objection to granting to the petitioner the land solicited, belonging to Don Jose Joaquin Buelna, as the latter states positively that he has abandoned the same, and cannot by any possibility improve it.

JOSE CASTRO.

190 MONTEREY, *Sept.* 21*st*, 1839.

In view of the petition commencing this expediente, the report of the prefect, and the abandonment by Don Joaquin Buelna of the land granted to him on the 18th of July, 1834, known by the name of Zayante, and other matters necessary to be considered, and in conformity with the laws and decrees, I hereby, by this present decree, grant to the said Francisco Mos the said tract of Zayante, bordering upon the Villa de Branciforte and mission of Santa Cruz, subject to the conditions expressed in the title; the principal one being that he shall bind himself to pay the tax that may be imposed, if the land appertaining to the egidos of the villa, and that he will not interfere with the common right of pasture and wood, and travel by known roads, upon the said land of Zayante.

Senor Don Manuel Jimeno Casarin, first proprietary vocale of the most excellent departmental junta, has thus ordered, decreed, and signed.

MANUEL JIMENO.
FRANCISCO CARCE,
First Official.

MONTERRY, *May* 22*d*, 1840.

The above was submitted to the most excellent departmental junta in session of to-day, and referred to the commission on agriculture.

JOSE Z. FERNANDA, *Sec'y.*

191 On the 26th it was returned by the commission with the following report.

FERNANDA.

MONTEREY, *June* 13, 1840.

In view of the approbation made on the 26th of May of *of* the present year, by the most excellent departmental junta, let certificate be issued to Don Francisco Mos, in confirmation of his title to the land of Zayante, which he obtained on the 21st of September, 1839.

Senor Don Juan B. Alvarado, governor of the department of the Californias, has thus decreed and signed.

ALVARADO.

MOST EXCELLENT SENOR: The commission upon agriculture, directed to report upon the proceedings relative to the petition of Don Manuel Mos, for the land called Zayante, by abandonment of Don Joaquin Buelna, in view of the said petition and reports of the prefect, Don Jose Castro, and of the

justice of the peace, Don Juan Auzar, and alcalde of the Villa de Branciforte, the indemnity of eight hundred dollars, paid by the first party to the second, and the grant of said land, in favor of the said Don Manuel Mos, by the governor ad interim, Don Manuel Jimeno Casarin, the commission presents the following articles for your excellency's consideration:

192 ART. 1st. It approves of the grant of the land Zayante, by Don Manuel Jimeno, governor ad interim, to Don Manuel Mos, on account of the renunciation of the said land by Don Joaquin Buelna.

ART. 2d. Don Joaquin Buelna cannot be permitted to petition for or to obtain another tract of land, since he has abandoned the land which was granted to him by the Mexican nation, and for the reasons expressed in his petition of Sept. 6th of the last year.

ART. 3d. This expediente shall pass to the departmental government, for the necessary action.

Monterey, May 25, 1840.

S. ARGUELLO.

JOSE RAFAEL GONZALES.

MONTEREY, *May* 26, 1840.

In session of to-day, the most excellent departamental junta approved of articles 1st and 3d, which conclude the foregoing report, the commission withdrawing the second.

MANUEL JIMENO, *President.*
JOSE L. FERNANDES, *Secretary.*

Senor prefect of the 1st district:

193 Francisco Mos and Juan Jose Clisostomo Majors, naturalized citizens of the Mexican republic, and married to women of this department, respectfully represent to your worship that, it being for the interest of the first to give up the land that he possesses by the name of Zayante, and which was granted to him by superior title on the 20th of Sept., 1839, he makes absolute donation of the same to the second subscribing party, and we therefore beg that your worship will consider and make report upon this petition in order that the most excellent governor, by virtue of his power, may approve of the same.

Wherefore, we beg that your worship will proceed in accordance with our request, thereby conferring a favor upon us.

San Juan de Castro, April 21, 1841.

JUAN JOSE CLISOSTOMO MAJORS.

For Don Francisco Mos, at his request, on account of not knowing how to write.

F. M. BRAVO.

MOST EXCELLENT SENOR: Francisco Mos and Juan Jose Majors, foreigners naturalized in and married to women of the country, solicit by the present petition that your excellency will approve of the donation made by the first to the second of the land called Zayante, and which was granted to
194 the first by superior title, on the 20th of Sept., 1839.

Stamp of the third class. Two reals.

Considering the qualifications of Majors, and his diligence in labor, it is the opinion of this prefecture that, if your excellency sees fit, the said petition may be granted.

San Juan de Castro, April 21st, 1841.

JOSE F. CASTRO.

Stamp of the 1st class. Six dollars.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

ALVARADO.
ANTONIO MA. PICO.

Manuel Jemino Casarino, first proprietary vocal of the most excellent departmental junta of the Californias, in charge of the government of the same:

Whereas Don Francisco Mos has solicited, for his personal benefit and that of his family, the land formerly occupied by Don Joaquin Buelna, known by the name of Zayante, bordering upon the Villa de Branciforte and the mission of Santa Cruz, the proper proceedings and investigations having been had according to the laws and regulations, by virtue of the powers conferred upon me in the name of the Mexican nation, I have decided to grant him the above-mentioned land, declaring him the owner thereof,
195 without prejudice to the common privileges of the inhabitants of the Villa de Branciforte, with respect to pastures, water, lumber, firewood, &c., subject to the tax that may be imposed, if the land shall be found to belong to the egidos of the said villa, and to the following conditions:

1st. He may enclose the land, without interfering with the passages, roads, and servidumbres, devoting it to the use or cultivation that he may prefer, but within one year he must build a house, which shall be inhabited.

2d. He shall, without delay, request the proper judge to give him juridical possession of the land, in accordance with this decree, defining the boundaries thereof, and placing landmarks at the termini of the same, besides fruit or forest trees of some utility.

3d. The above-mentioned tract of land is one league in length, by one-half league in breadth, a little more or less, according to the map accompanying this expediente; the judge who gives possession shall have the land measured in conformity with the ordinance respecting boundaries, and any surplus shall be the property of the nation, for the proper uses.

4th. In case the petitioner does not observe these conditions, he shall lose his right to the land, and it may be denounced by another.

Wherefore I order that this title be considered firm and valid, that
196 it be recorded in the proper book, and be delivered to the petitioner for his protection and the necessary purposes.

Given at Monterey, Sept. 20th, 1839

MANUEL JIMENO.
FRANCISCO C. ARCE, *First "Official."*

The foregoing is a correct translation.

R. C. HOPKINS.

Endorsed: Filed Jan'y 21st, 1861.

W. H. CHEVERS, *Clerk.*

197 Copy of translation of the proceedings, at the instance of J. L. Majors, who claims a tract of land called San Agustin. Translated by John Clar.

Exhibit U. S. No. 2.

First seal. Six dollars.

Provisionally authorized by the maritime custom-house of Monterey, for the years 1839 and 1840.

(Signed) ALVARADO.
(Signed) ANTONIO MA. OSIO.

[SEAL.] Authorized for the years 1841 and 1842.
(Signed) ALVARADO.
(Signed) ANTONIO MA. OSIO.

Juan B. Alvarado, constitutional governor of the department of the Californias:

Whereas Don Juan Jose Crisostomo Major, naturalized, and married to a Mexican, has petitioned, for his personal benefit and that of his family, for the tract of land known by the name of San Agustin, bounded by the town of Branciforte, and having complied with the requirements of the laws and regulations in the matter, it results that Don Jose Bolcoff, to whom it had been granted, has abandoned it, now, by virtue of the authority in me vested, I have thought proper, in the name of the Mexican nation, to grant to him said tract of land, declaring the same to be his property by these
198 letters patent, said grant being understood to be in entire conformity with the requirements of the laws, and without injury to the common benefit of the inhabitants of said town, so far as relates to pastures, water, wood, timber, etc.; subject to pay the rent that may be assessed, if it should result that it belongs to the commons of that settlement (poblacion) when its boundaries shall be fixed, reserving said grant for the approval of the excellent departmental board and to the following conditions:

1st. He may fence it without obstructing the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, putting it to the use and culture he may deem best, but within one year he shall build a house, which shall be inhabited.

2d. He shall solicit the respective judge to give him juridical possession, by virtue of this patent, by whom the boundaries shall be fixed, at the limits of which he shall set, beside the landmarks, some fruit trees or else wild ones of some usefulness.

3d. The land of which donation is made is of one *sitio de ganado mayor* (one square league,) a little more or less, as shown by the plat annexed to the espediente, (proceedings)

4th. If he contravene to these conditions, he shall lose his right to the land, and it shall be denouncable by another person.

199 Consequently I command that, viewing this as a title-deed, and holding it as firm and valid, the same be entered in the corresponding book, and be returned to the interested party for his own security and further ends. Given in Monterey on the 21st of April, 1841.

(Signed) JUAN B. ALVARADO.
MANUEL JIMENO, *Secretary.*

The same has been recorded in this office, in the Book of Entries relative to the Adjudication of Vacant Lands, on folio 4.

JIMENO.

His excellency the governor directs that this title-deed be recorded in the office of the prefect of the 1st district.

JIMENO.

SAN JUAN DE CASTRO, *April 23d*, 1841.

Let it be entered.

JOSE F. CASTRO.

This title-deed was entered in this prefecture of the 1st district, on folio 2 of the respective book.

MANUEL CASTANARES, *Secretary.*

200 To his honor, the justice of the peace:

Jose Crisostomo Majors, of this vicinity, before your honor presents himself and says that, having obtained a grant of the land known by the name of San Agustin, he now applies to your honor for the juridical possession, agreeably to the stipulation of the article 2d of the title of the land issued on the 22d April of the present year, which he duly forwards for the desired end, wherefore he request your honor to put him in the possession he solicits, by which he shall receive justice.

Santa Cruz, July 23d, 1841.

Presented and admitted in the town of Branciforte, July 24th, 1841.

Agreeably to the preceeding petition, I, the judge of the admeasurements, fixing of boundaries, &c., the giving of juridical possession solicited by the interested party in this espediente, shall proceed and do appoint the 25th instant to that effect, for which summons shall be issued to the bordering neighbors, requiring their attendance. Thus I, the justice of the peace, did decree, command, and sign, with my assistants in the act, in lieu of a notary public, there being none at present here, all which I attest in due form.

(Signed) JOSE BOLCOFF.

At the rancho of San Agustin, July 25th, present month and years.

In fulfilment of the foregoing, the citizens of this rancho met for
201 the measurement, designation of boundaries and possession thereof, and I now appoint, as measurers, the citizens Francisco Rodriguez and Cornelio Perez, who, with the previous acceptance and required oath, shall proceed to discharge that duty. Thus I, the judge, did decree, command, and sign with the assistants.

JOSE BOLCOFF.

Assistants: CORNELIO PEREZ.
ROMAN RODRIGUEZ.
FRANCISCO RODRIGUEZ.

On the same date, at the forementioned rancho, the preceding decree was notified to the citizen measurers, and they made oath, in the name of God and the sign of the cross, as is usual, without bias against any person whatsoever, and the assisting witness, signed this with myself.

JOSE BOLCOFF.

Assistant: ROMAN RODRIGUEZ.
FRANCISCO RODRIGUEZ.
CORNELIO PEREZ.

At the same rancho, and on the same date, at about 12 o'clock meridian, I, the judge present, commanded the appointed measurers to proceed to measure the land which are to be measured for citizen Juan Jose Majors; the measuring was commenced by stretching cordel (cord) to the north, until reaching the land on the S. having measured 10,000 varas, at which place, Las Piedras de Molino were designated as a landmark; and from E. to W. it could not be measured, it being a thick wood, and the river San

Lorenzo was given as a landmark; the plan being sketched in the
202 same form in which the land was measured, the said measurers declaring that there was one sitio de ganado mayor. In witness whereof, they, the measurers, signed this with myself and the assistant witnesses.

(Signed) JOSE BOLCOFF.
(Signed) Assistant: ROMAN RODRIGUEZ.
(Signed) FRANCISCO RODRIGUEZ.
(Signed) CORNELIO PEREZ.

At the same rancho, and said date, citizen Juan Jose Crisostomo Majors, accompanying the justice of the peace to said place, and the assistant witnesses, citizen Majors said, that as the lands of the rancho had been measured as is evident by the preceding act, he took the true, corporal, and real possession of the said place, it being two leagues in length, the width to be that required to complete the whole extent; because it belongs to him, as expressed in the title of concession, issued on the 21st of April of the present year, by the governor of the department, by virtue of the authority in him vested. On the said date he went upon and walked over it, and pulled up grass and trees, and threw stones to the four winds of heaven, and performed other ceremonies and acts of possession, in sign of that which he said he took of said land, and the said judge commanded that, from that time, he should be considered and recognised as the true owner and possessor thereof. For the proof and preservation of his right, in future, the said citizen Majors
203 asked a certified copy of all the foregoing proceedings, which I, the aforesaid judge, with my assisting witnesses, with whom I act, in default of a notary public, there being none, according to law, extended, which I certify.

(Signed) JOSE BOLCOFF.
(Signed) FRANCISCO RODRIGUEZ, (rubric.)
(Signed) CORNELIO PEREZ.
(Signed) ROMAN RODGRIGUEZ.

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document in case No. 208, J. L. Majors, for the place called San Agustin, now on file in this office.

In testimony whereof, I have hereunto signed my name, office of the secretary of the above-named commission, at the city of San Francisco, Cal., this 27th day of September, A. D. 1854.

GEO. FISHER, *Sec'y.*

The foregoing is admitted without further proof, this January 23, 1861.

EDW. STANLY, *for Cl'ts.*
JNO. B. WILLIAMS,
Att'y in aid U. S. Att'y.

204 Endorsed: Filed January 21, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of Joseph L. Majors.

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* } In land cases.—Dist. court, No. 342; land com. No. 260.

Be it remembered, that on this 4th day of January, A. D. 1861, at San Francisco, in the district aforesaid, before me, Cutler McAllister, a commissioner duly appointed by the circuit court of the United States for the district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Joseph L. Majors, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the

acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

205 Present: C. Benham, U. S. att'y, by J. W. Williams; E. Stanley, for claimant.

Questions in behalf of the United States.

Question 1st. Your name, age, and place of residence?

Ans. Joseph L. Majors; I am 55 years of age; I reside in Santa Cruz County.

Ques. 2. Were you the original grantee of the Mexican government to the land claimed by Isaac Graham *et als.* in this case?

Ans. I was.

Ques. 3. In your deposition given in this case on behalf of the claimants in September, 1859, you speak of the juridical possession which was given to you by Jose Bolcoff, at which you were present, when certain measurements were made by Bolcoff. State if you recollect where the landmark was situated, showing the western end of the line, running east and west; and if so, state what that landmark was, and its location.

Ans. They commenced running the line at the western corner, on the west side of the San Lorenzo River, where there is a monte. There was a pine tree there as a landmark.

Ques. 4. Was there or not between this pine tree and the San Lo-

206 renzo River, and to the west of that river, what is called a potrero. And if so, was that potrero intended to be included within the measurement?

Ans. There was a potrero there; the measurement did not include the potrero; except a small portion of it.

Ques. 5. Were there any other potreros on the west side of the San Lorenzo River, and north from the one which you have mentioned. And if so, were they or any portion of them included or not included within that measurement?

Ans. There were some there, but not inside of the measurement.

Ques. 6. What land did you sell to Mr. Graham?

Ans. I sold them the rancho of Zayante, and gave them a title to it.

Ques. 7. Examine Exhibit No. 1, to deposition of R. C. Hopkins in this case, and state if you have any knowledge concerning it.

Ans. I never saw this exhibit before; I was sent for, and brought my papers to exhibit them to Bolcoff.

Cross-examination—questions for claimants.

207 Ques. 1. When juridical possession was given by Bolcoff to you, did they measure in the middle of the rancho where the riding was good, or did they ride along the outside boundaries?

Ans. They went as near what they supposed to be the middle of the rancho as they could.

Ques. 2. Is not the land between the still-house and potrero a sand-hill?

Ans. Yes, sir; there are some hills along there, two or three; I don't know how many.

Ques. 3. Is there any timber between the still-house and potrero for a saw-mill?

(Objected to as irrelevant, the land not having been granted for its wood, but for agricultural purposes.

(Counsel for claimants contradicts the fact set forth in above objection.)

Ans. There is some, but very little; there has been some, but it has all been used up. I suppose there are some pine and redwood trees standing yet.

Ques. 4. In your deposition taken in this case on the 13th Sept., 1859, you state that you received juridical possession from Bolcoff, and that he raised his hands up and said he gave you possession to the tops
208 of the mountains. How much land did he put you in possession of at that time?

(Objected to, because the written act of possession shows the land which was actually measured.)

Ans. I considered that the measurements were the proper possession, but he gave me possession all around.

Ques. 5. In the same deposition you were asked the question, What do you consider the quantity within these lines. And your answer was, I would think it would be seven or eight leagues. Do you mean to say that you ever claimed seven or eight leagues of land under the title given you by the Mexican government?

Ans. No, sir; I don't. I only claimed what was measured and marked. The possession he gave me was more than the marked lines.

Ques. 6. Look at the map now shown you, attached to the Exhibit No. 1, heretofore referred to, and state whether you remember when the same was presented by Graham to Bolcoff in your presence.

Ans. I do not remember that any map was presented by Graham to Bolcoff at all. I can't read the papers at all.

209 Ques. 7. Who came for you when you went before Bolcoff with your papers, and for what purpose did you go?

Ans. Bolcoff sent up to me, by an Indian, a written paper, to bring my title down to him. When I brought the papers to Bolcoff, he looked at the papers and said the land belonged to me.

Ques. 8. Who was claiming the land then from you?

Ans. I understood afterwards that Graham wanted to get it; it was the same land that was marked out on my diseno.

Ques. 9. Was Graham claiming the land on the west side of the San Lorenzo River, for the redwood timber for his mill?

Ans. I don't know that positively, but I suppose it was so.

Ques. 10. In your deposition taken on the 13th Sept'r, 1859, you were asked the question, "Was not the land west of the San Lorenzo River, and up to the top of the hills, always considered and possessed as part of the ranch? And you answered, "Yes, sir; it was considered so." I ask you now, was not the land west of the San Lorenzo River, and up to the top of the hills, covered with redwood, the same land that Bolcoff decided was pos-
210 sessed by you?

Ans. By the possession given it was claimed as such.

Ques. 11. According to the custom of the country at that time, could the land asked for by Graham, be granted to him after it was decided to be covered by your title-papers?

(Objected to.)

Ans. I don't know.

Ques. 12. When you came before Bolcoff with your papers, did you bring the map attached to them, and by whom was that map drawn?

Ans. When I came before Bolcoff, I brought the map attached to my papers. This map was drawn in pencil by J. W. Weeks.

Ques. 13. Do you know whether Graham has or has not cut timber on the mountain side west of the San Lorenzo before the Americans took possession of this country?

(Objected to, because the cutting of timber in this country is no proof of ownership of the land.)

Ans. I never saw anybody cutting there, but I understood that Graham did cut timber there.

Ques. 14. Were not you interested in the saw-mill before you
211 made the conveyance to Graham, and was not timber cut on that mountain side, by you or Graham, or by persons employed by you?

(Objected to, as it is not contended by the U. S. that Graham and Majors had no right to cut timber from vacant land.)

Ans. I had nothing to do with the mill on the San Lorenzo; the mill on the Zayante, I had. No wood was cut for the Zayante mill on that mountain by myself or persons employed by me that I know of.

Ques. 15. When you appeared before Bolcoff with the title-papers of the "Sayante" ranch, did you not contend that the land that Graham asked for was not vacant, but belonged to you, and did you not offer to bet with Graham your part of the mill against his that such was the fact?

Ans. I contended that it was laid down on my diseno, and that I would bet that it was so.

Ques. 16. Was this the same time that Bolcoff decided that the land that Graham petitioned for belonged to you?

Ans. This took place some little time before, probably about a week before. At the time we offered to bet, Henry Nail went to Monterey to see whether the map filed there corresponded with my map; he saw the
212 map, and found out that I was right. Weeks made two maps, one of which was filed at Monterey and the other given to me.

Ques. 17. Are you a man of education, and can you read?

Ans. I can't read; I get other people to read my letters. I can write my name, and that is all I can do.

Ques. 18. Was not the land of which Bolcoff put you in possession covered with chemisal and other thick undergrowth so as to make it impossible to survey the land straight?

Ans. It could not be run straight unless by cutting brush. They did not pretend to run through brush, but made allowance for crooks, &c.

Direct examination resumed.

Ques. 1. Were you not also the grantee under the Mexican government of the San Agustin ranch?

(Objected to as irrelevant.)

Ans. I was. They were both received the same day from the governor, and received possession of both the same day. The papers may have borne different dates.

Ques. 2. Was it or was it not your intention that the westerly line
213 of the San Agustin ranch should be the easterly line of the Sayant ranch, and was not that contemplated by the measurement that was made?

(Objected to as irrelevant.)

Ans. It was. The Sayante papers call for the San Agustin ranch.

Ques. 3. Why did ask for the two ranches, instead of getting the land in one body?

Ans. I got the Sayante ranch for other men, who were not Mexican citizens, and who could not hold land, and I held it in my name for them; the San Agustin ranch I got for myself. Graham bought out one of the men for whom I held the ranch.

Cross-examination resumed.

Ques. 1. At the the time of this controversy before Bolcoff, in 1843, were not the wild Indians very troublesome in committing depredations, stealing horses, and otherwise?

Ans. They were. They had stolen 103 of my horses, and Graham went with me and I recovered them.

Ques. 2. When juridical possession was given you of the San Agustin ranch, were all the lines of the juridical possession run, or was it
214 run with as little regularity as in the Sayante case?

Ans. Both done just the same; within three hours of the other. They run the line of the Sayante and then ran over to the San Agustin, and ran through the middle of it.

Examination closed.

J. L. MAJORS.

Subscribed and sworn to before me this 4th day of Jan'y, A. D. 1861.

CUTLER McALLISTER, *U. S. Comm'r.*

Endorsed: Filed Jan'y 22d, 1861.

W. H. CHEVERS, *Clerk.*

215 *Opinion.*

District court of the United States, northern district of California.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* } No. 342.—"Sayante."

An order having been made by the court to modify and reform the survey of this claim, the case has been again presented on a rehearing.

I have carefully re-examined the grounds of the former order, as also the additional proofs which have been taken. I have been unable to perceive any reasons for changing the views already expressed by the court. It is clear from the terms of the grant that the land conceded was to be one league in length by half a league in breadth, a little more or less. It is also clear from the record of the judicial delivery of possession, that a tract 5,000 varas in length by 3,000 varas in width was measured off to the grantee by the officer who gave the possession. The location of the lines so measured is fixed by the testimony of all the witnesses beyond any reasonable doubt, and their points of beginning and ending are identified. I do not know on what principle I can disregard the location of the tract so fixed by competent authority.

216 It is true that after the measurement of the lines the alcalde appears to have said to the grantee in a loose and informal way that "he might take the land as far as the hills all around." But of this the record of possession makes no mention, and a tract so bounded would have included a quantity of land several times greater than that included in the grant.

The grantee, himself, from whom the claimants derive title, states that although the alcalde gave him possession "all around," he considered that the measurements were the proper possession, and that "he only claimed what was measured and marked."

It appears that the claimant cut timber on the west side of the San Lorenzo shortly after he obtained a conveyance from Majors, the grantee, and probably before the Americans came to the country, and that in 1847 he and his partners erected a saw-mill on the same stream. But these facts prove nothing except that he availed himself of the timber growing on unoccupied lands adjacent to his rancho, or at most that he had an idea that those lands were included in his possession.

That he did not at first think so is evident from the fact that in

217 1843 he petitioned the governor to grant him the very land which he now seeks to have included in his survey.

This petition, (altho' the circumstance that Graham was not a naturalized Mexican citizen would have been an insuperable obstacle to the grant,) was referred by the governor to the local authority for information, and Bolcoff, the alcalde, reported that the land was occupied by Majors, "as had been shown to him by the title and map from the government."

The alcalde, in this report, seemed either to have forgotten the measurement he had previously made, or else to have supposed that his general permission to the grantee to take a tract all around to the hills operated in some way to give him a right to the whole extent of land, several times larger than the quantity granted to him, represented on the diseno.

But we have already seen that Majors himself made no such claim, and the saw-mill erected by him was on the Zayante, and not like those erected by Graham in 1847 and 1848 on the San Lorenzo.

But it is not now contended that the whole of the tract bounded by the hills should be surveyed to the claimant. To justify such a pretension the court would be obliged to attribute to the alcalde the right to put
218 the grantee in possession of any tract, no matter how much it might exceed the quantity mentioned in the grant; in short, to exercise the granting power. Such a claim would be wholly inadmissible. But it is asked that the court, on the ground that the claimant cut some timber on the hillsides, put up saw-mills on the San Lorenzo in 1847 and 1848, and after the report of the alcalde that the land was included in Majors's diseno, appears to have thought that his grant embraced the hills, should shift the location from the boundaries of which were measured to him, and formally recorded in the act of possession to another tract on the western side of the San Lorenzo where the much valuable still remains. But independently of the insuperable objections presented by the fact that his land was measured and assigned to him by the proper officer under the former government, such a location would be inadmissible for other reasons.

In the diseno exhibited by the claimant and on a copy of which the grant was founded are rudely represented two houses, a corral, and
219 an enclosed cultivated field. All these objects are in the southeast corner of the map and are situated in the rincon where were the settlement and principal cultivations of the grantee. But if the tract be located as contended for by the claimants, these buildings, &c., would not be included in the survey, and yet that the tract should be located so as to include the improvements of the grantee would seem unquestionable.

On the whole, I think that the testimony leaves no room for doubt as to what tract was measured off to the grantee by the alcalde, and that the general permission given to the grantee by that officer, after making his measurement, to take possession of a much larger tract, can have no effect to vary the location of the tract now to be surveyed to the claimant.

That the latter, who appears to be a worthy but not a brightly educated man, has believed, since the report of Bolcoff on his petition in 1843, that he had a right to all the land west of the San Lorenzo and on the hillsides, is most probable. But it is, I think, evident that he supposed his grant included those lands in addition to the tract measured off to him, and
220 not instead of the latter, and that he has based his idea on the fact of the alcalde's general permission already referred to, and on the circumstance that the whole tract is laid down on the diseno.

But the duty of this court is plain. First to restrict the quantity to that mentioned in the grant, and secondly to locate within the boundaries of the diseno, according to the measurement made by the alcalde, and officially recorded and signed by him and the assisting witnesses in the act of pos-

session, more especially as in this way alone can the houses, the cultivated field, the corral, &c., delineated on the diseno, be included in the survey.

The counsel for the claimant has referred the court to several of the more recent decisions of the Supreme Court. Of these the only one which can be supposed to have any bearing on the case at bar is U. S. *vs.* Alviso, 23d How., p. 318.

In that case it appeared that the claimant had, in 1840, petitioned for a tract of land and obtained permission to occupy it provisionally. The
221 authorities reported that the land was vacant and the claimant had continued ever since in occupation and possession of the tract.

The Supreme Court refused to disturb so ancient a possession, notwithstanding that the formal title never was issued. But that decision can have no application to the case at bar For independently of the fact that the evidence of an exclusive consists only in the circumstance that timber was cut by the claimant on hills adjacent to his land, we have the grant itself before us which specifies the extent of land granted, and a formal record of the judicial measurement which shows its location as fixed by the officer. There is no evidence that the possession of a different or larger tract was sanctioned by competent authority, for the statement by Bolcoff in his report that the land was included in Majors's diseno cannot be construed as giving or intended to give to Majors or his grantee a right to occupy a tract of much greater extent than that granted to him by the government or measured to him by the alcalde.

222 For these reasons, I think that the order for an amended survey heretofore made by this court ought not be set aside, and that the land should be located as is therein directed.

Endorsed : Filed February 13, 1861.

W. H. CHEVERS, *Clerk.*

Order directing new survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court room, in the city of San Francisco, on Saturday, the sixteenth day of February, in the year of our Lord one thousand eight hundred and sixty-one.

Present : The Honorable Ogden Hoffman, district judge.

THE UNITED STATES *vs.* ISAAC GRAHAM *et al.* } No. 342.—"Zayante."

This cause came on to be heard upon exceptions to the official survey of the land confirmed, a certified copy plat whereof was filed July 9,
223 1859, and counsel for the respective parties having been heard, and due consideration had, it is hereby ordered and adjudged that the said survey is erroneous, and the same is hereby annulled and set aside.

And it is further ordered that the surveyor general of the U. S. for California cause a new survey to be made without delay, in conformity with this order, and return a plat of the same for confirmation and approval.

And it is further ordered, that the said survey shall be made as follows : The length of the tract shall be found by a line run from a tree near the "Molino," shown on the exhibit attached to the deposition of Jose Cornelio

Perez, filed Sept. 14, 1859, in its northeast corner, to a point in the rincon south of Zayante Creek, where a marked oak tree is shown on said exhibit as the termination of the longitudinal line of the judicial measurement, and at a distance from the beginning point of about 5,000 varas; and if said oak tree cannot be found, then the said line is to terminate as near as may be to the point where said tree is laid down on said exhibit, but so as to make its point of termination 5,000 varas distant in a north and south
224 direction from the point of beginning. And the width of said tract shall be measured as follows: Beginning at a point where a pine tree is shown on exhibit west of the San Lorenzo River, near a monte, thence to a pine tree on the east of Zayante Creek, marked on said plat as the termination of the latitudinal line of said judicial measurement; and if either or both of said trees cannot be found, then the said latitudinal line is to commence as near as may be at the point indicated on said exhibit as its point of beginning, and to run in the direction of said latitudinal line, as laid down on the said exhibit, towards the point marked thereon as its point of termination, but so that its length in an east and west direction shall be 3,000 varas. The length and width of the tract having been thus ascertained, a rectangular tract shall be surveyed, of which the eastern line shall commence at the point near the Molino aforesaid, shall pass through the eastern extremity of the latitudinal line ascertained as aforesaid, and be produced until it shall be in a line with and due east from the point ascertained as the southern extremity of the longitudinal line as before determined; the
225 southern line of said tract shall be run thence at right angles so as to pass through the said southern termination of the longitudinal line until in a line with and due south from the point of beginning of the latitudinal line as before determined; and the western line of said tract shall be run thence at right angles so as to pass through the said point of beginning of the latitudinal line, and be produced until it is in a line with and due west from the point of beginning; and the northern boundary line shall be run thence to the place of beginning, provided, that in running said lines, the surveyor may depart from their precise location as herein laid down, so far as may be necessary to conform to the nearest lines of the public surveys. The tract so surveyed shall be at least of the extent of 5,000 varas in length by 3,000 in width.

And it is further ordered, that a certified copy hereof be served upon the surveyor general of the U. S. for Cala. by the U. S. marshal of this district.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed:

226 I hereby certify that I have this day made personal service of the within order on James W. Mandeville, U. S. surveyor general for California, by delivering to him a certified copy thereof and exhibiting to him this original.

P. L. SOLOMON, *U. S. Marshal.*

San Francisco, February 18th, 1864.

Endorsed: Filed February 16, 1861.

W. H. CHEVERS, *Clerk.*

227 *Order allowing all parties* 10 *days to file exceptions to the last survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Friday, the 18th day of July, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ISAAC GRAHAM *et al.* } No. 342.

And now, at this day, on motion of J. B. Crockett, esq., of counsel for the claimants, it is ordered by the court that all parties have ten days to file exceptions to the last survey made by the U. S. sur. general.

Endorsed: Filed July 18th, 1862.

W. H. CHEVERS, *Clerk.*

228 *Exceptions to survey by U. S.*

United States district court, northern district of the State of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et al.* } No. 342.—Zayante.

And now comes the United States, by their attorney, William H. Sharp, esq., and excepts to the survey made and approved by the United States surveyor general for the State of California, of the land claimed in this case, a plat of which survey was filed in the clerk's office of said court on the 10th day of June, 1862, and for exceptions to said survey, the United States, by their said attorney, allege as follows:

First. That the decree of this court, made on the 16th day of February, A. D. 1861, directs in relation to the survey of the latitudinal line of the Zayante claim as follows, to wit: That the width of said tract shall be measured as follows: Beginning at a point where a pine tree is shown on said exhibit west of the San Lorenzo River near a monte, thence,
229 &c., &c. "And the western line of said tract shall be run thence at right angles, so as to pass through the point of beginning of the latitudinal line, and be produced, &c.," all of which will more fully appear by said decree, reference to which is hereby made as though said decree were herein fully incorporated.

Second. That said survey as to its western boundary line has not been in accordance with the plain direction of said decree of this court, in this, to wit: That instead of commencing the latitudinal line at a point where a pine tree is shown, &c., as directed by the decree of the court, (which pine tree, it is well known, is now standing at the point designated in the exhibit named in the decree aforesaid,) so that the western boundary line should pass through that point according to said decree, the survey has been made in such a way that the western boundary line does not touch that point, but throws the whole of the western boundary line seven chains and twenty-one links west of the said pine tree, and thereby wrongfully and in violation of the plain and positive directions of this court in the decree aforesaid, includes a tract of land on the west, seven chains and twenty-one links
230 in width, claimed as public lands by one George W. Evans, and on which is located all the improvements of said Evans, consisting of dwelling-houses, barns, out-houses, &c.

Wherefore, the premises considered, the United States prays this court to reject the said approved survey as erroneous, and for leave to offer proofs of the errors complained of herein; and that an order be made directing the said United States surveyor general for California, to cause a new survey to be made in accordance with the decree of this court of February 16, 1861, and that he return a plot of the same, when made, to this court, for

its approval, and for such other and further relief as shall seem meet to this honorable court in the premises.

San Francisco, July 28th, 1862.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed July 28th, 1862.

W. H. CHEVERS, *Clerk.*

231 *Order allowing U. S. att'y to withdraw exceptions, filed July 28, 1862.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ISAAC GRAHAM *et al.* } No. 342.

It appearing to the court that the surveyor general of the U. S. for Cala., has returned to the court his survey of the land confirmed, shown by the plat filed June 10, 1862, and that exceptions to said survey were filed by the U. S. July 28, 1862, now, on application of W. H. Sharp, esq., U. S. att'y, it is ordered that he have leave to withdraw from the files his said exceptions.

Endorsed: Filed Oct. 26, 1863.

W. H. CHEVERS, *Clerk.*

232 *Final decree.*

At a stated term of the dist. court of the United States for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 26th day of October, A. D. 1863.

Present: Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
v.
ISAAC GRAHAM *et al.* } No. 342.

And now, at this day, it appearing to the court that the surveyor general of the United States for California has returned to the court his survey and location of the land confirmed herein, made in performance of the order of the court entered February 16, 1861, and which survey and location is shown by the certified copy plat filed June 10, 1862, and counsel for the respective parties being present, it is ordered, adjudged, and decreed that the survey and location of the land confirmed in this cause, the field-notes of which survey were approved by E. F. Beale, surveyor general of the United States for the State of California, on the 2d day of May, 1862, is a good
233 and valid survey of the land confirmed to the said Isaac Graham *et al.*, claimants herein, and that the said survey and location be, and the same hereby is, approved.

And it is further ordered, adjudged, and decreed that the certified copy plat of said survey and location, filed June 10, 1862, and marked "Approved, October 26th, 1863, Ogden Hoffman, district judge," be attached to and made part of this decree for a more full and particular description of the

tract of land of the area of twenty-six hundred and fifty-eight 21-100 acres, now finally confirmed to the said Isaac Graham and others.

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed Oct. 26, 1863.

W. H. CHEVERS, *Clerk.*

(Here follows map, page 234.)

234

235 *Order granting appeal on behalf of claimants.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the 7th day of April, in the year of our Lord one thousand eight hundred and sixty-four.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
ISAAC GRAHAM *et al.*
} No. 342.—"Zayante."

This cause having come on to be heard on objections to the survey and location of the land heretofore confirmed to the said Isaac Graham *et al.*, claimants, and the court having, by its decree entered on the 16th February, 1861, ordered a modification of the said survey, and by its final decree entered on the 26th day of October, 1863, approved said modified
236 survey, now, on motion of said claimants, by their attorney, E. Stanly, esq., it is ordered that an appeal in behalf of said claimants from said final decree be, and the same is hereby, granted, and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed April 7th, 1864.

W. H. CHEVERS, *Clerk.*

237 *Citation.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
ISAAC GRAHAM *et als.*
} No. 342.

United States of America to William H. Sharp, esq., district attorney of the United States, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to an order of appeal granted on the seventh day of April, A. D. 1864, in open court, by the district judge of the district court of the United States for the northern district of California, in a certain suit, wherein the United States are plaintiffs, and Isaac Graham and others are defendants, on appeal to show cause, if any there be, why the decision in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

238 Witness my hand and seal, at San Francisco, this seventh day of April, in the year of our Lord one thousand eight hundred and sixty-four.

OGDEN HOFFMAN, [SEAL.]
Dist. Judge.

Endorsed:
Due service of a copy of within admitted this 7th day of April, 1864.
WM. H. SHARP, *U. S. Att'y.*

Filed April 8, 1864.

W. H. CHEVERS, *Clerk.*

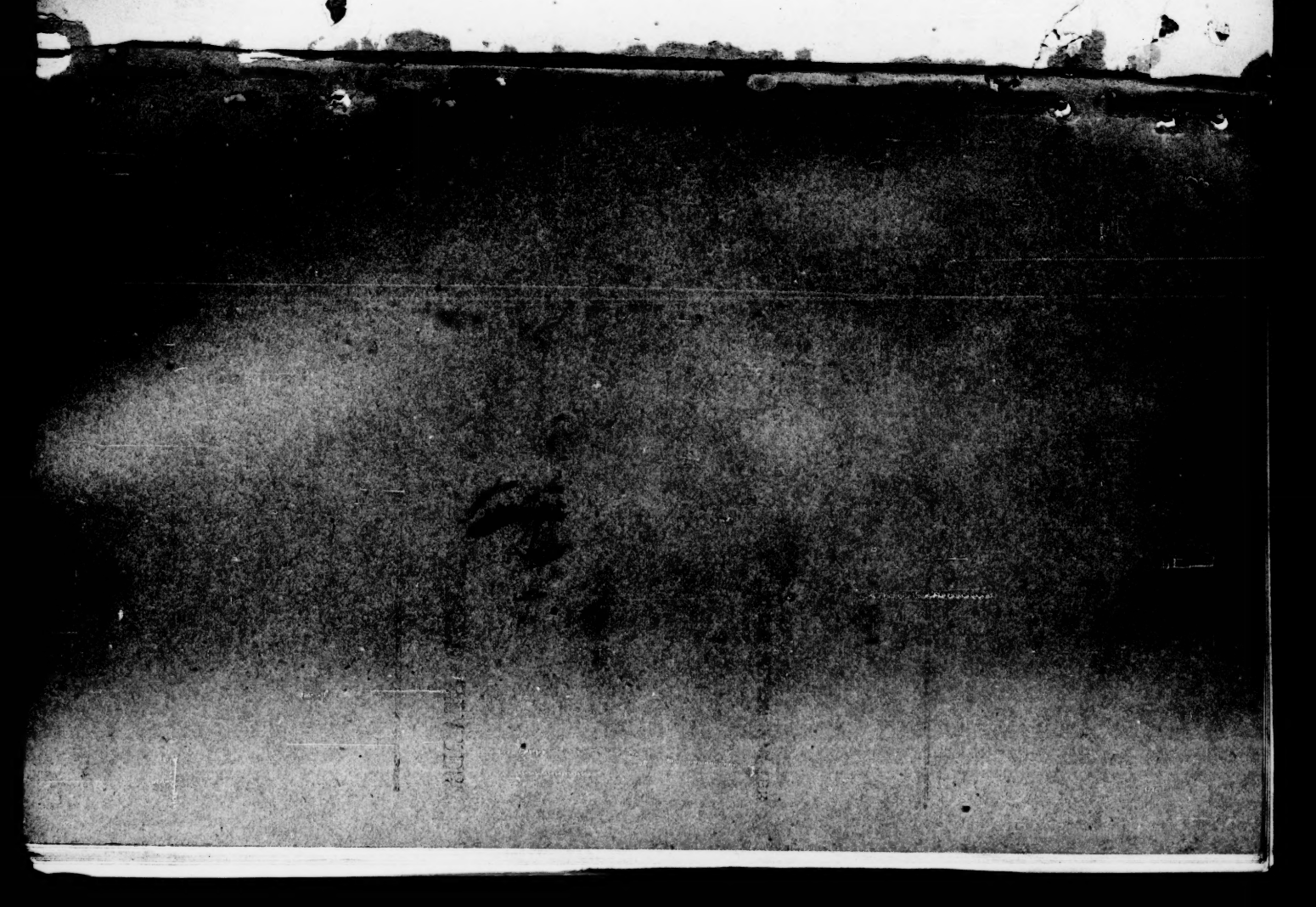
239 I, William H. Sharp, United States district attorney for the northern district of California, by virtue of the power conferred on me by law, to wit, by section second of an act of Congress entitled "An act relating to appeals to the Supreme Court of the United States," approved August sixth, 1861, whereby federal district attorneys in California are authorized to transcribe and certify records in land cases wherein the United States is a party, and upon which appeals have been or may be taken to the Supreme Court of the United States, do hereby certify that the annexed and foregoing two hundred and thirty-eight consecutively numbered pages contain a full, true, and correct transcript of the record, pleadings, stipulations, affidavits, orders, decrees, maps, &c., in the case of the United States *vs.* Isaac Graham *et al.*, No. 242, now on file and remaining of record
240 in the clerk's office of the United States district court.

And I further certify that the said record, pleadings, &c., from which the present transcript is made out, were duly delivered to me by the clerk of said court at my request.

In testimony whereof, I have hereunto set my hand and affixed my private seal this fourth day of June, A. D. 1864, and of our independence the eighty-eighth.

WM. H. SHARP, [SEAL.]
U. S. Att'y, Northern Dist. of Cal'a.

Filed 12th July, 1864.



Supreme Court of the United States.

DECEMBER TERM, 1866.

GRAHAM *et al.* APPELLANTS,

vs.

THE UNITED STATES.

The land in dispute seems first to have been granted to Buelno in 1834; afterwards denounced and granted to Moss in 1839, and petitioned for and granted to Myers in 184[illegible]. The claimants hold title under Myers. No question is made as to their being the holders of Myers' title, nor upon that title. The only question is whether that includes the property.

I. Whether a proper location of it by its terms does include it.

II. Whether the facts proved as to the possession delivered under it does not give a title which should be confirmed.

These facts will be proved in the testimony of Belcraft, pp. 5, 59; Myers 7, 37; Logan 53.

On this I shall rely on United States *vs.* Alviro, 23 Howard, 318.

REVERDY JOHNSON,
For Appellants.

In the Supreme Court of the United States,

DECEMBER TERM, 1865.

ISAAC GRAHAM *et al.*, appellants,
vs.
THE UNITED STATES. } No. 153.

APPEAL FROM THE DECREE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA.

STATEMENT AND BRIEF FOR THE UNITED STATES.

This case is an appeal from a decree of the United States district court for the northern district of California, in a survey case.

The facts of the case are clearly and ably stated in the two elaborate opinions of the district judge, (printed record, p. 42, &c., p. 73, &c.;) and his decree should be affirmed for the reasons stated therein, which need not be repeated.

The real cause of complaint was with the United States, as appears by the exceptions filed to this decree, (*ib.*, pp. 77–78,) but they were withdrawn by the United States before the decree was made final, in a spirit of generosity which the claimant has failed to appreciate.

No brief has been filed by the appellants. The appeal seems to have been taken merely for purposes of delay, in order to give the claimants an opportunity to strip the land of the timber in controversy, during the two years in which the appeal has been pending.

JAMES SPEED,
Attorney General.
JOHN A. WILLS,
Special counsel for United States.

MARCH 14, 1866.